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United States General Accounting Office

GAO

Report to the Chairman, Committee on Post Office and Civil Service House of Representatives

COMPLETED

March 1986

FEDERAL CIVILIAN PERSONNEL

Federal Labor Relations Authority and Administrative Roles and Case Processing

ORIGINAL

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GAO

United States
General Accounting Office
Washington, D.C. 20548

General Government Division

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March 26, 1986

The Honorable William D. Ford
Chairman, Committee on Post Office and
Civil Service
House of Representatives

Dear Mr. Chairman:

In your July 19, 1985, letter, you requested that we examine several issues relating to the Federal Labor Relations Authority (FLRA). (See app. I.) As provided by Title VII of the Civil Service Reform Act of 1978 (P.L. 95-454, 5 U.S.C. 7101-7135 [1982]), FLRA was established to serve as an independent, neutral third party for resolving labor management disputes in the federal sector. The agency is organized into four major subunits: (1) the Authority, by law composed of three Members and their staff; (2) the Office of General Counsel (OGC); (3) the Office of Administrative Law Judges; and (4) the Federal Service Impasses Panel. Specifically, you asked that we (1) examine whether FLRA can perform its responsibility when its Members have not been confirmed by the Senate; (2) review the administrative role of the General Counsel; and (3) look into the agency's caseload and case processing.

The first of these issues was addressed in our previous report Effects of Unconfirmed Members at the Federal Labor Relations Authority (GAO/GGD-86-29, December 9, 1985). In that report, we concluded that the Authority could legally perform its statutory responsibility even though only two of its three authorized Member positions were filled and only one of those Members had been confirmed by the Senate. However, we did note that, as of August 22, 1985, about one-fourth of the Authority's caseload was delayed because of the lack of a third Member and that the Authority would not be able to issue decisions if another Member position became vacant. Since that time, a new Chairman has been appointed, but one Member's term has expired, leaving a two-member Board.

This report addresses the role of the General Counsel and FLRA case processing. With regard to the first issue, the Members of the Authority and the General Counsel disagree as to whether the Chairman or the General Counsel should control the budget and staff allocations for OGC. In brief, we believe that the administrative responsibilities of the Chairman and the General Counsel are unclear and that those responsibilities should be clarified by the Congress. Regarding FLRA case processing, the data generally indicate reductions in the agency's case

backlog and caseload between fiscal years (FY) 1983 and 1985. Case processing time decreased in the Office of the General Counsel and the Office of Administrative Law Judges but generally increased in the Authority.

Background

FLRA establishes policies and guidance relating to federal labor-management relations and has primary responsibility for administering Title VII of the Civil Service Reform Act. As mentioned above, the agency is organized into four major subunits. The Authority makes final decisions on differences between parties in the collective bargaining process. OGC supervises the FLRA regional offices, investigates and prosecutes unfair labor practice (ULP) matters before the Authority, conducts elections, and issues initial decisions in representation matters involving federal employees. Initial determinations by the regional directors are appealable to the Authority. The Office of Administrative Law Judges conducts hearings and prepares decisions in ULP cases and certain representation cases. The Federal Services Impasses Panel assists federal agencies and unions representing federal employees in resolving impasses that arise in labor negotiations.

Objectives, Scope, and Methodology

The objectives of this review were to examine the administrative responsibilities of the Chairman and the General Counsel and to present data on FLRA's caseload and case processing. We conducted our work between August 19, 1985, and January 7, 1986, at the Washington, D.C., headquarters of FLRA. In conducting this review, we

- interviewed management officials responsible for agency operations, including the recently appointed Chairman, the former Acting Chairman who is now a member of the Authority, the other Member of the Authority at the time we conducted our review, the General Counsel, the Authority's Director for Case Management, and the Director of the OGC's Office of Financial and Program Analysis;
- interviewed the former General Counsel and officials at the Office of Management and Budget; and
- reviewed the FLRA's authorizing legislation and its history, relevant procedural and policy manuals, and available statistical data.

As specified by your office, we did not request official agency comments but did discuss our draft report with Members of the Authority, the General Counsel, and other agency officials. Subsequently, the Chairman and the other Member provided written comments, which are

included in Appendix III. As agreed with your office, we then requested and obtained written comments from the General Counsel (app. IV). The Chairman and the other Member of the Authority disagreed with the report's conclusion that the administrative role of the General Counsel is unclear and said that the report did not contain a balanced view on this issue. They also recommended some technical changes to the report which we incorporated where appropriate, although the report's conclusions and recommendation were not changed. Our responses to their comments are included with their statements in Appendix III. The General Counsel said that our report accurately stated his position on the issue of administrative responsibilities within his Office. The General Counsel also said that the report's case processing data was accurate and that the analysis of that data was appropriate and sound.

Our review was conducted in accordance with generally accepted government auditing standards.

Administrative Roles of the Chairman and the General Counsel Are Unclear

FLRA's enabling statute clearly establishes the substantive responsibilities of both OGC and the Authority. OGC was established by the Congress as a separate, independent office within FLRA to prosecute cases, and the Authority was established as the adjudicatory arm of the agency. The original statute did not, however, specify whether the General Counsel should have independent budgetary and personnel authority or whether the Chairman should exercise such authority for the entire agency.

Several attempts have been made to clarify administrative responsibilities within FLRA since it was established. On September 11, 1979, the Members of the Authority and the General Counsel signed a delegation of authority to the executive director[1] to exercise final authority for personnel and financial management as well as other administrative matters within FLRA. As we have reported, that delegation was unsuccessful, as many administrative and management issues continued to be decided by the Members, not by the executive director. On May 20, 1982, after questions arose regarding procurement practices within the Authority, the Members of the Authority delegated to the Chairman responsibility and authority for the management of internal administrative matters.[2]

[1]The executive director is a career civil service employee responsible for all Authority staff functions and provides administrative support to the entire agency.

[2]See Deficient Management Practices at the Federal Labor Relations Authority—Action Being Taken, GAO/PLRD-83-24, February 2, 1983.

However, the FLRA Solicitor had previously determined that a change in the statute was necessary to delegate administrative powers to the Chairman. That statutory change became effective on March 2, 1984, through the Civil Service Miscellaneous Amendments Act of 1983 (P.L. 98-224), which amended 5 U.S.C. Section 7104(b) and designated the Chairman as the "chief executive and administrative officer of the Authority."

Despite these attempts to clarify administrative responsibilities within the agency, the General Counsel and the Members of the Authority disagree as to whether the Chairman has budgetary and personnel authority over OGC, or whether those powers extend only to the Authority (i.e., the three Members and their staff). The General Counsel, John C. Miller, maintains that it is impossible for him to function as an independent prosecutor if the FLRA Chairman controls OGC's budget and personnel; he believes that he should have budget authority separate from that of the Authority. (See app. IV for a full statement of the General Counsel's position.) Former FLRA General Counsel H. Stephan Gordon and former Member William J. McGinnis, Jr., support this position. The former and current General Counsels cite the following incidents as actions that they believe have infringed on OGC's independence.

- In 1981, the Chairman and the Members proposed closing three OGC regional offices as a budget-cutting measure without consulting the General Counsel. This, the former General Counsel told us, would have "totally emasculated" OGC. The proposal was eventually dropped when the General Counsel objected.
- In 1983, the Chairman delegated to OGC's regional directors the authority to issue decisions and orders in representation cases. Despite this increased workload and a request from his office for additional staff and budget, the General Counsel said that the Chairman did not provide additional resources. This, he said, indirectly affected his ability to discharge his responsibilities in a timely and effective manner.
- In 1984, the Chairman eliminated funds for OGC administrative travel, training, and equipment purchases from the initial FY 1986 budget request. According to the General Counsel, this was done without an opportunity for discussion or modification by his office and usurped his statutory authority.
- Also in 1984, the Chairman proposed a staff reduction of four full-time equivalent (FTE) positions for FY 1986 within OGC which were to be added to the Authority's staffing level. The General Counsel said that this reduction in staffing was made despite his objections. He noted that the OGC staff had decreased by 23 FTE positions between FY 1983 and

FY 1986, while the Authority's staff allocation increased by 2 FTE positions during that period. The General Counsel said that this decline in the OGC staffing had indirectly affected the OGC's ability to meet its statutory responsibility to prosecute cases.

The Chairman of the Authority, Jerry L. Calhoun, and the other Member, Henry B. Frazier III, disagreed with the factual accuracy of these allegations. Mr. Calhoun also told us that he believes that the Chairman is the chief executive and administrative officer of FLRA, including the Office of General Counsel. He said that the Civil Service Miscellaneous Amendments Act of 1983 was designed to establish in one person responsibility and accountability for administrative matters within FLRA and cited the Act's legislative history as support for his position. He also said that, in an agency as small as FLRA, separate administrative responsibility and accountability results in duplication of effort and expense. Finally, he said that the Chairman should have the flexibility to allocate funds to the different parts of the agency as the workload changes.

Member Frazier, Acting Chairman of the Authority until December 1985, also told us that one individual must be responsible and accountable for the administration and allocation of appropriated funds within FLRA under the amended statute. He said that, taken together, the Civil Service Miscellaneous Amendments Act and the Anti-Deficiency Act (31 U.S.C. Sections 1349-1351 and 1517-1519 [1982]) indicate that the Chairman is that individual. Mr. Frazier also said that he believes that the agency's enabling statute establishes the General Counsel as an independent entity only insofar as specifically provided by Congress or delegated by the Authority, and independent budget authority has not been so vested in the General Counsel. Finally, he said that he believes that sufficient checks exist on the Chairman's authority to prevent him from interfering with the General Counsel's statutory responsibilities. These checks include, according to Member Frazier, oversight by the Office of Management and Budget, the White House, and the Congress. (See app. III for a full statement of Chairman Calhoun's and Member Frazier's views.)

Others agree with Chairman Calhoun and Member Frazier. The previous Chairman, Barbara J. Mahone, also maintained that she had fiscal responsibility for OGC. Office of Management and Budget officials indicated that they believe that the Chairman is FLRA's chief executive and administrative officer and is responsible for the distribution of funds

and resources in accordance with program requirements throughout the agency.

The Congress has also become involved in this issue. In the conference report on the FY 1986 appropriation bill, which was incorporated by reference into the Continuing Resolution that funds FLRA, House and Senate conferees directed that a set proportion of the FLRA's FY 1986 funds and positions be directed for use by OGC.[3] They also directed that the FY 1987 budget submission include separate budget justifications for the Authority and for OGC. However, this does not resolve the controversy. While it does indicate the congressional intent that a set proportion of funds and positions be reserved for use by OGC, it does not specify who controls the funds.

In our opinion, the relevant statutes and their legislative histories do not resolve the issue of who should control the funds for OGC. Good arguments can be made for both points of view. As noted by the General Counsel, the FLRA's enabling legislation clearly establishes a definite separation between the prosecutorial function of the General Counsel and the adjudicatory function of the Authority, and it can be argued that this separation requires separate and independent control of funds.

Furthermore, the legislative history of the FLRA's enabling legislation clearly shows that Congress intended the General Counsel of FLRA to have the same degree of autonomy in carrying out his duties as prosecutor as is accorded the General Counsel of the National Labor Relations Board (NLRB). Historically, the Chairman of NLRB has not asserted control over the budget of the General Counsel. Rather, NLRB has delegated authority to perform fiscal functions for the General Counsel, the Chairman, and the Members of NLRB to the Director of Administration. The Director of Administration reports to the General Counsel. One could argue that since FLRA is modeled after NLRB, the Congress intended FLRA to accord its General Counsel comparable autonomy.

On the other hand, the enabling legislation of FLRA and NLRB do not specifically address the issue of whether their respective General Counsels should have independent budgetary control. The General Counsel of NLRB has such control in practice, but the statute does not specifically require it. In this respect, the enabling statutes of both NLRB and FLRA are ambiguous.

[3]H.R. Rep. No. 349, 99 Congress, 1 Session 17 (October 31, 1985) [Conference Report to H.R. 3036]; and Public Law No. 99-190, Section 335(h) [H.J. Res. 465-107], December 19, 1985.

We believe that the Miscellaneous Amendments Act does not resolve the ambiguity in the FLRA's enabling legislation. We agree with the Chairman that ordinarily language designating the Chairman as the chief administrative and executive officer would mean that the Chairman has authority to control the budget of the entire agency, including the General Counsel. However, in this instance, the enabling legislation accords the General Counsel unique status as an independent prosecutor and an unusual degree of autonomy. We are aware of nothing in the Miscellaneous Amendments Act or its legislative history that alters or changes the degree of autonomy accorded to the General Counsel. The amendment was enacted because of administrative problems regarding the procurement practices of the two Members and the Chairman of the Authority. It was intended to make the Chairman clearly accountable for the actions of the Chairman and the two Members and their staffs. There is no suggestion that the Congress intended to affect the authority of the General Counsel or that the Congress was addressing budget disputes between the General Counsel and the Chairman.

We also note that the enabling legislation of the Merit Systems Protection Board (MSPB) specifically designates the Chairman as the chief administrative and executive officer of the Board. Nevertheless, because of the unique status of the Special Counsel as an independent prosecutor, the Chairman and the Special Counsel have administratively agreed to separate administrations. The Chairman no longer asserts budgetary control over the Special Counsel. Again, one could argue that the Congress expected FLRA to accord its prosecutor similar independence.

In our opinion, reliance upon the Anti-Deficiency Act is also misplaced. That Act provides for administrative and criminal sanctions against officers or employees who authorize overexpenditures. These requirements do not affect the budgetary authority of either the Chairman or the General Counsel. Either would be subject to sanctions if found to be the official responsible for overexpenditures. The Act also requires that the head of the agency report violations to the President and the Congress. The requirement to report violations does not preclude giving the General Counsel independent budgetary authority.

Matters for Consideration by the Congress

We believe that the Chairman and the General Counsel's administrative responsibilities are unclear and should be clarified. Furthermore, we believe that the budgetary independence accorded to the General Counsel of NLRB and the Special Counsel of MSPB could serve as useful

models for resolution of this issue at FLRA. Both NLRB and MSPB have interpreted the legislative mandate for an independent prosecutor to mean that the adjudicatory body cannot assert control over the budget of the independent prosecutor. Although FLRA could administratively adopt such a relationship, Chairman Calhoun said that he did not believe that such an arrangement would be in the agency's best interest. Alternatively, the Congress could specify in legislation the Chairman's and the General Counsel's administrative responsibilities.

Case Processing Data Indicate Reduction in Case Backlog

Four general categories of cases are processed by FLRA: unfair labor practice allegations, representation petitions, exceptions to arbitration awards, and negotiability appeals. Each category is discussed below, with data for FY 1983 through FY 1985 on caseload, case disposition, and cases pending at the end of each fiscal year. (See app. II.) The data indicate that the Office of General Counsel and the Office of Administrative Law Judges have reduced the amount of time needed to process their cases, while the Authority's case processing time has increased. In each part of the agency, there have been reductions in both caseload and case backlog from FY 1983 to FY 1985.

ULP Allegations

In ULP cases, individuals, unions, or agencies file charges in the OGC regional offices that government agencies or labor organizations have committed unfair labor practices in violation of the Federal Service Labor-Management Relations Statute. At any stage in the process, the complainant may withdraw the charge. If the OGC investigation determines that there is no reasonable cause to believe that a violation has occurred, the regional director dismisses the charge. If the charge has merit, the regional director attempts to reach a voluntary settlement to remedy the situation. If settlement efforts fail, a complaint is issued, and the case is forwarded to the Authority for a decision. If the facts in the case are in dispute, however, the case is first heard by an Administrative Law Judge (ALJ), who issues a decision that may be appealed to the Authority if either party objects to the decision. If no objections are made, the decision of the ALJ becomes final. The regional director may determine that no material issue of fact exists in a case and, with the agreement of all parties, transfer it, along with a stipulation of facts, directly to the Authority for a decision without hearing. A complaint may be settled even after a complaint is issued.

The number of ULP cases where a complaint was issued by OGC decreased between FY 1983 and FY 1985, as did the median number of days necessary to process a case and the number of cases pending at the end of the fiscal year. Many of the cases pending that are over 60 days old are being held pending some other action. For example, in cases in which a labor organization files both a ULP charge and a negotiability appeal[4] involving the same negotiability issue, the Authority and OGC ordinarily will not process both simultaneously. The labor organization must select the procedure under which it wishes to proceed, and further action under the other will ordinarily be suspended. (See table II.1, p. 18.)

As in the ULP cases before OGC, total case processing time for ULP cases before the ALJs decreased between FY 1983 and FY 1985. However, the median amount of time needed for formal ALJ decisions increased during this period. The number of dispositions increased, with most of that increase due to a higher number of informal settlements. Finally, the number of cases pending before the ALJs declined by over one-half during this three-year period. (See table II.2, p. 19.)

The number of ULP cases closed by the Authority increased from 165 to 293 between FY 1983 and FY 1985, with most of that increase occurring during FY 1985. All of the increase is attributable to merit closings—those involving a formal decision by Members of the Authority based on the issues in the case. The median age of cases disposed of also increased, with all of that increase again a result of merit dispositions. According to the Director for Case Management, this increase in median age of cases closed is the result of a reduction in the backlog of older cases before the Authority. As more older cases were closed, the median age of case closures increased. (See table II.3, p. 20.)

Representation Petitions

Representation petitions are filed with regional OGC offices by employees, unions, or agencies to determine the appropriateness of units for the purpose of exclusive representation by a labor organization. Representation petitions may also involve the conduct or supervision of an election to determine whether a majority of employees in an appropriate unit wish to be represented by a labor organization, decertification of previously recognized exclusive representatives, clarification or consolidation of existing units, and amendment of previous certifications. An OGC investigation of representation petitions can result in the withdrawal or dismissal of the petition, a consent election agreement, a

[4]Negotiability appeals are discussed on page 11 of the report.

notice of hearing, or a decision and order. (See the note in table II.4, p. 21, for an explanation of these terms.) Decisions and orders of the regional directors are final, but a party may file an application for review with the Authority, which may be granted only where it appears that a compelling reason exists for doing so. The Authority may dismiss such an application on procedural grounds, deny it, or review the decision and order and rule on the issues involved.

While the number of total OGC dispositions remained relatively constant between FY 1983 and FY 1985, the median number of days needed to dispose of those cases declined somewhat during that period. The sharpest declines occurred in the decision and order and notice of hearing categories. The number of cases pending at the end of the fiscal year dropped from 52 to 31 during this time period, but dropped from 58 to 31 from FY 1984 to FY 1985. (See table II.4, p. 21.)

More significant declines in representation case processing time and cases pending occurred in the Authority (table II.5, p. 22). Representation petitions before the Authority in FY 1985 took less than one-third as long to close as such petitions in FY 1983. Procedural closings evidenced the greatest decline, taking less than one sixth as long in FY 1985 as in FY 1983. The Authority's representational caseload also declined significantly (from 141 to 55) as did the cases pending before the Authority (from 57 to 5) and the age of those pending cases. According to the Director for Case Management, these changes in representation case processing are primarily due to the Authority's October 1983 delegation of authority to OGC for decisions and orders.

Exceptions to Arbitration Awards

Exceptions to arbitration awards may be filed with the Authority by either unions or agencies. The Authority may dismiss the exception on procedural grounds, find that the award is proper, or find that it is deficient. An award may be deficient either because it is contrary to law, rule, or regulation or on grounds similar to those applied by federal courts in private sector labor-management relations cases. In such cases, the Authority may take such action and make such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

The number of arbitration case closures has more than doubled between FY 1983 and FY 1985, with the highest number of such closures occurring in FY 1984. The median age of cases closed was also highest in FY 1984. The Director for Case Management attributed this increase in

median case age to the Authority's efforts to reduce the relatively large number of older cases pending at the end of FY 1983. By FY 1985, the number of arbitration cases pending decreased to less than one-third their FY 1983 level. (See table II.6, p. 23.)

Negotiability Appeals

Negotiability appeals may be filed by employee unions in disputes with agencies concerning what matters may be collectively bargained. An exclusive representative may propose that a particular matter be collectively bargained, while an agency may contend that the matter is outside the duty to bargain because it conflicts with federal law, government-wide rules or regulations, or an agency regulation for which a compelling need exists or because the matter is negotiable and the agency has elected not to bargain. The exclusive representative may then file a negotiability appeal with the Authority, which may be closed procedurally or decided based on the merits of the case.

The number of negotiability appeals closed by the Authority increased from 141 to 198 between FY 1983 and FY 1985, with all of that increase attributable to merit closings. (See table II.7, p. 24.) The age of case closings varied widely during this period, rising sharply in FY 1984 and falling again in FY 1985. The number of cases pending at the end of each fiscal year also declined somewhat during this period, as did the number of cases in four of the five pending age categories. Nevertheless, about a third of all pending cases in FY 1985 were over 721 days old. The Director for Case Management said many of these older cases are cases in abeyance due to the lack of a third member. (See our prior report, Effects of Unconfirmed Members at the Federal Labor Relations Authority, GAO/GGD-86-29, for a discussion of these cases.)

As arranged with your office, we will send copies of this report to interested parties and make copies available to others on request.

Sincerely yours,

W.J. Anderson

William J. Anderson
Director

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Abbreviations

ALJ	Administrative Law Judge
FLRA	Federal Labor Relations Authority
FTE	full-time equivalent
MSPB	Merit Systems Protection Board
NLRB	National Labor Relations Board
OGC	Office of General Counsel
OMB	Office of Management and Budget
ULP	unfair labor practice

Request Letters

WILLIAM D. FORD, MICHIGAN, CHAIRMAN

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House of Representatives
Committee on Post Office and Civil Service
Washington, DC 20515

TELEPHONE (202) 225-4054

July 19, 1985

Honorable Charles A. Bowsher
Comptroller General of the
United States
General Accounting Office
Washington, D. C. 20548

Dear Mr. Bowsher:

Enclosed are copies of letters I have received from Representative Patricia Schroeder, Chairwoman of the Subcommittee on Civil Service, requesting reviews of certain issues relating to the Office of Personnel Management and the Federal Labor Relations Authority.

I would appreciate your reviewing the issues described in the enclosed correspondence and providing the Committee with your findings. Should you have any questions concerning this request, please contact Andrew Feinstein of the Subcommittee staff on 225-4025.

Your assistance in providing this information is appreciated.

With kind regards,

Sincerely,

WILLIAM D. FORD
Chairman

Enclosures

WDF:rlp

NINETY-NINTH CONGRESS

PATRICIA SCHROEDER, COLORADO, CHAIRWOMAN
GERRY SIKORSKI, MINNESOTA CHARLES PASHAYAN, JR., CALIFORNIA
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U.S. House of Representatives
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July 19, 1985

Honorable William D. Ford, Chairman
Committee on Post Office & Civil Service
309 Cannon House Office Building
Washington, DC 20515

Dear Mr. Chairman:

As of July 1, 1985, the Federal Labor Relations Authority (FLRA) has no members serving on terms for which they were confirmed by the Senate. The Chairmanship has been vacant since Barbara Mahone resigned on August 31, 1984. Member Henry B. Frazier III continues to serve under provisions of the law, despite the fact that his term ended on July 1, 1985. William J. McGinnis was given a recess appointment as a Member in December 1984 but the Senate has taken no action on his nomination.

The Federal Labor Relations Authority was created as part of the Civil Service Reform Act of 1978 to serve as an independent, neutral third party for resolving labor-management disputes in the Federal sector. I request that you ask the General Accounting Office to examine whether the FLRA can perform this responsibility with a lack of confirmed members. Further, GAO Should review the role of the General Counsel. Finally, GAO should look into the Authority's caseload and case processing.

With kind regards,

Sincerely,

PATRICIA SCHROEDER
Chairwoman

Case Processing Statistics

Table II.1: Office of General Counsel's Unfair Labor Practice Case Processing, FY 1983-FY 1985

	FY 1983	FY 1984	FY 1985
A. Caseload	**6,436**	**6,115**	**6,273**
B. Dispositions			
1. No Complaint Issued	4,774	4,500	4,767
Median Age (days)	70	62	60
2. Complaint Issued	726	691	640
Median Age (days)	98	85	83
3. Total	**5,500**	**5,191**	**5,407**
Median Age (days)	**74**	**66**	**63**
C. Cases Pending at End of Fiscal Year, by Age			
1. 1 - 30 days	419	404	416
2. 31 - 60 days	261	313	273
3. 61 - 90 days	116	99	87
4. 91 - 120 days	68	53	23
5. 120+ days	72	55	67
6. Total	**936**	**924**	**866**

Note: In this table and in subsequent tables, caseload includes cases pending from the prior fiscal year and new cases received during that fiscal year. OGC/ULP cases where no complaint is issued include those which are withdrawn, dismissed, or settled prior to any issuance of a complaint. Cases where a complaint is issued include cases settled after a complaint is filed and cases subsequently sent to the Authority for a decision. The age of cases disposed of and pending is determined from the date that the charge is filed by the complainant.

Table II.2: Administrative Law Judges' Unfair Labor Practice Case Processing, FY 1983-FY 1985

	FY 1983	FY 1984	FY 1985
A. Caseload	**1,177**	**1,134**	**1,025**
B. Dispositions			
1. Decision	169	152	162
Median Age (Days)	224	292	286
2. Remanded to OGC	1	7	6
Median Age (Days)	91	140	74
3. Settlement (Prehearing)	628	650	688
Median Age (Days)	62	54	47
4. Total	**798**	**809**	**856**
Median Age (Days)	**93**	**98**	**86**
C. Cases Pending at End of Fiscal Year, by Age			
1. 1 - 60 days	113	137	103
2. 61 - 120 days	116	63	24
3. 121 - 180 days	43	17	17
4. 181 - 240 days	33	25	12
5. 241 - 300 days	16	21	3
6. 301 - 360 days	6	10	2
7. 360+ days	52	52	8
8. Total	**379**	**325**	**169**

Note: Cases involving decisions are those in which a hearing is held and the ALJs transmit their decision to the Authority. Cases remanded to OGC are those in which a hearing has been held, but the ALJ does not issue a decision because the case is resolved through settlement, withdrawal, or some other method. Settlements (prehearing) refers to cases settled prior to the hearing. The age of cases disposed of and pending is determined from the date that the case is filed with the ALJ Office.

Table II.3: Authority's Unfair Labor Practice Case Processing, FY 1983-FY 1985

	FY 1983	FY 1984	FY 1985
A. Caseload	**439**	**461**	**441**
B. Dispositions			
1. Procedural Closings	59	57	53
Median Age (Days)	104	73	41
2. Merit Closings	106	124	240
Median Age (Days)	519	626	655
3. Total	**165**	**181**	**293**
Median Age (Days)	**303**	**429**	**537**
C. Cases Pending at End of Fiscal Year, by Age			
1. 1 - 180 days	75	67	59
2. 180 - 360 days	59	54	36
3. 361 - 540 days	41	47	23
4. 541 - 720 days	39	39	14
5. 721+ days	60	73	16
6. Total	**274**	**280**	**148**

Note: Procedural closings are based on a defect in the filing requirements, such as timeliness, and do not involve the merits of the case. Procedural closings are determined by FLRA staff with the right to review by the Members of the Authority. Merit closings are based on the issues in the case and are made after a formal decision by the Members. The age of cases disposed of and pending is determined from the date that the case is transmitted from the ALJ office to the Authority.

Table II.4: Office of General Counsel's Representation Case Processing, FY 1983-FY 1985

	FY 1983	FY 1984	FY 1985
A. Caseload	**436**	**457**	**405**
B. Dispositions			
1. Petition Withdrawn and Dismissed	137	123	113
Median Age (Days)	46	48	40
2. Consent Election Agreement	102	89	74
Median Age (Days)	54	51	54
3. Decision and Order	55	75	66
Median Age (Days)	78	68	57
4. Notice of Hearing	90	112	121
Median Age (Days)	65	53	50
5. Total	**384**	**399**	**374**
Median Age (Days)	**57**	**54**	**49**
C. Cases Pending at End of Fiscal Year, by Age			
1. 1 - 30 days	28	30	17
2. 31 - 60 days	15	21	9
3. 61 - 90 days	3	5	1
4. 91+ days	0	2	0
5. Blocked	6	0	4
6. Total	**52**	**58**	**31**

Note: A consent election agreement is an agreement by both parties to hold an election that will determine the exclusive representative for a bargaining unit. A decision and order is a formal decision by the OGC regional director in response to a petition. A notice of hearing refers to the scheduling of a formal hearing by the OGC regional director on a matter related to the petition. Cases pending that are blocked are cases held in abeyance until a related ULF charge is resolved.

Table II.5: Authority's Representation Case Processing, FY 1983-FY 1985

	FY 1983	FY 1984	FY 1985
A. Caseload	**141**	**97**	**55**
B. Dispositions			
1. Procedural Closings	4	8	9
Median Age (Days)	190	85	30
2. Merit Closings	80	62	41
Median Age (Days)	543	344	176
3. Total	**84**	**70**	**50**
Median Age (Days)	**533**	**322**	**166**
C. Cases Pending at End of Fiscal Year, By Age			
1. 1 - 180 days	27	6	3
2. 180 - 360 days	17	13	2
3. 361 - 540 days	4	5	0
4. 541 - 720 days	4	1	0
5. 721+ days	5	2	0
6. Total	**57**	**27**	**5**

Note: Procedural closings are based on a defect in filing requirements, such as timeliness, and do not involve the merits of the case. Procedural closings are determined by FLRA staff with the right to review by the Members of the Authority. Merit closings are based on the issues in the petition and are made after a formal decision by the Members. The age of petitions disposed of and pending reflects cases filed before and after the 1983 transfer of authority to issue initial decisions in representation cases to regional directors. For cases filed after the 1983 transfer of authority, the age of the petition is determined from the date that the application for review of the regional director's decision is filed with the Authority.

Table II.6: Authority's Arbitration Case Processing, FY 1983-FY 1985

	FY 1983	FY 1984	FY 1985
A. Caseload	**375**	**468**	**360**
B. Dispositions			
1. Procedural Closings	59	54	41
Median Age (Days)	31	53	42
2. Merit Closings	68	264	237
Median Age (Days)	502	352	167
3. Total	**127**	**318**	**278**
Median Age (Days)	**146**	**267**	**146**
C. Cases Pending at End of Fiscal Year, by Age			
1. 1 - 180 days	86	71	53
2. 180 - 360 days	61	24	14
3. 361 - 540 days	47	25	4
4. 541 - 720 days	32	19	2
5. 721+ days	22	11	9
6. Total	**248**	**150**	**82**

Note: Procedural closings are based on a defect in the filing requirements, such as timeliness, and do not involve the merits of the case. Procedural closings are determined by FLRA staff with the right to review by the Members of the Authority. Merit closings are based on the issues in the case and are made after a formal decision by the Members. The age of cases disposed of and pending is determined from the date that the exceptions to the award are filed with the Authority.

Table II.7: Authority's Negotiability Case Processing, FY 1983-FY 1985

	FY 1983	FY 1984	FY 1985
A. Caseload	**432**	**447**	**418**
B. Dispositions			
1. Procedural Closings	62	70	60
Median Age (Days)	83	132	66
2. Merit Closings	79	103	138
Median Age (Days)	662	863	621
3. Total	**141**	**173**	**198**
Median Age (Days)	**429**	**618**	**476**
C. Cases Pending at End of Fiscal Year, by Age			
1. 1 - 180 days	83	65	55
2. 180 - 360 days	42	46	37
3. 361 - 540 days	59	55	26
4. 541 - 720 days	48	32	26
5. 721+ days	59	76	76
6. Total	**291**	**274**	**220**

Note: Procedural closings are based on a defect in the filing requirements, such as timeliness, and do not involve the merits of the case. Procedural closings are determined by FLRA staff with the right to review by the Members of the Authority. Merit closings are based on the issues in the case and are made after a formal decision by the Members. The age of cases disposed of and pending is determined from the date that the petition for review is filed with the Authority.

Advance Comments From the Federal Labor Relations Authority Members

Note: GAO comments supplementing those in the report text appear at the end of this appendix

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424

February 10, 1986

Honorable Charles A. Bowsher
Comptroller General of the
United States
General Accounting Office
Washington, D.C. 20548

Dear Mr. Bowsher:

We appreciate this opportunity to comment on the draft GAO report (B-219908) concerning the role of the General Counsel and case processing at the Federal Labor Relations Authority. As an enclosure to this letter, we have included an appendix containing, among other things, responses to specific allegations in the report, and suggested technical changes.

Initially, we want to emphasize that the question of the administrative responsibilities of the General Counsel has long troubled the FLRA. While we disagree with the conclusions in the report that relevant statutes and legislative history do not resolve the issue of the Chairman's authority as chief executive and administrative officer of the agency, our primary concern is not how the issue is resolved, but rather that it be resolved swiftly.

The report does not contain a balanced view of the issue of the General Counsel's role. For example, the report recites "incidents" cited by the former and current General Counsels as actions "infringing on OGC's independence." There are no analyses of these allegations, however. The former Chairman, Barbara J. Mahone, was apparently not interviewed concerning the reasons various actions were proposed and taken. Moreover, while the General Counsel's assertions that certain actions "indirectly" affected the ability of his office to discharge its statutory responsibilities, the actual impacts, if any, of the actions are not addressed. As a result, no conclusions are drawn as to whether the actions were appropriate. In addition, the allegations contain factual inaccuracies, which are addressed in responses contained in the appendix.

See comment 1.

Along the same lines, the report contains brief discussions of administrative controls at the National Labor Relations Board and the Merit Systems Protection Board. We agree that information concerning budget authorities at the NLRB and the

MSPB is relevant to this inquiry. Significant differences between the FLRA, the NLRB, and the MSPB are ignored, however. Further, other Government agencies with prosecutorial functions and central budget authorities (such as the Federal Trade Commission and the Securities and Exchange Commission) are not addressed in the report. Thus, the report's statement that the budgetary independence accorded the General Counsel of the NLRB and the Special Counsel of the MSPB could serve as "useful models for resolution of this issue at FLRA [,]" is, at best, based upon an incomplete analysis of the issue.

See comment 2.

We disagree with the report's conclusion that the administrative role of the General Counsel is unclear. In this regard, the draft report contains an incomplete discussion of Member Frazier's views on the matter. We have included in the appendix to this letter a revision of this discussion which, we suggest, should be included in the final report as a more complete and accurate reflection of his views. We have also included in the appendix a letter of January 9, 1986, from Chairman Calhoun to Ms. Rosslyn Kleeman, Associate Director of Civilian Personnel Matters, GAO, concerning the role of the chief executive and administrative officer of the FLRA. That letter better expresses the Chairman's views as to that matter than does the description contained on page 7 of the draft report. As is stated in that letter, the Chairman believes that "Congress intended to centralize administrative responsibilities for the entire agency in the Chairman." Accordingly, the draft report's statement that the Chairman does not have a "firm position" on the matter is in error.

Now on p. 5.

See comment 3.

Finally, we believe that the draft report fails to recognize another important point. In an agency as small as the FLRA, separate administrative responsibility and accountability results in duplication of effort and expense. This is particularly significant in view of current budgetary constraints. In this regard, we have consulted with the Office of Management and Budget, which concurs in our views.

See comment 4.

As we noted earlier, we have enclosed an appendix. It contains (1) a suggested substitute for the last paragraph on page 6 of the draft report, concerning Member Frazier's views; (2) responses to specific allegations; (3) a copy of a letter from Chairman Calhoun to GAO; and (4) a list of suggested technical corrections. We ask that these matters be incorporated into

Now on p. 5.

the report. If they are not so incorporated, we ask that they be made part of the FLRA's response, which we understand will be included as an appendix to the final report.

Thank you again for the opportunity to comment on the draft report.

Sincerely,

Jerry L. Calhoun

Henry B. Frazier III

Enclosures

APPENDIX TO COMMENTS
CONCERNING DRAFT REPORT OF THE
GENERAL ACCOUNTING OFFICE
ON
THE ROLE OF THE GENERAL COUNSEL
AND
CASE PROCESSING
IN THE FEDERAL LABOR RELATIONS AUTHORITY

Table of Contents

Now on p. 5. Suggested substitute for last paragraph on page 6 of draft report (2 pages and attachment).

Now on pp. 4 and 5. Responses to specific allegations on pages 5 and 6 of draft report (2 pages).

January 9, 1986, letter from Chairman Calhoun to Ms. Rosslyn Kleeman, Associate Director of Civilian Personnel Matters, GAO (2 pages).

Suggested technical corrections (4 pages).

Now on p. 5.

SUGGESTED SUBSTITUTE FOR LAST PARAGRAPH ON PAGE 6:

However, Member Henry B. Frazier III, Acting Chairman of the Authority until December 1985, told us that in his view one individual is responsible and accountable for the administration and allocation of appropriated funds within FLRA under the amended Statute. He said that, taken together, the Civil Service Miscellaneous Amendments Act and the Anti-Deficiency Act support the view that the Chairman is that individual. Frazier cited a legal memorandum of October 15, 1984, from the Solicitor of the FLRA on the role of the Chairman regarding budget matters. The Solicitor concluded that Congress intended the Chairman to exercise exclusive authority and responsibility regarding internal FLRA administrative decisionmaking, including budget matters but that the Chairman may not take administrative actions which would detract from the authority of the other Members, or components of the FLRA such as the General Counsel, regarding substantive labor-management relations issues. (A copy of the Solicitor's memorandum is attached as an Appendix to this report.) Frazier noted that the designation of the Chairman "as chief executive and administrative officer of the Authority" provides support for this view. With respect to the Anti-Deficiency Act, 31 U.S.C. § 1341(a) mandates that "an officer or employee of the United States Government" shall not "make or authorize an expenditure or obligation exceeding an amount available in an appropriation. . . ." [Emphasis added.] Another portion of that Act, 31 U.S.C. § 1349(a), states that any officer or employee of the Federal Government violating § 1341(a) shall be subject to "appropriate administrative discipline" for such a violation. Under the Authority's own regulations concerning the administrative control of funds, FLRA 2520.1B (July 16, 1984), the Chairman of the Authority is responsible for "control[ling] agency-wide obligation levels within approved allotment and apportionments." FLRA 2520.1B, § 5a. It is entirely possible within this statutory and regulatory framework, that a Chairman may be held responsible for any authorization of an obligation that exceeds an appropriation in violation of 31 U.S.C. § 1341(a), including any for the General Counsel's Office, thereby subjecting the Chairman to discipline under 31 U.S.C. § 1349(a).

Frazier pointed out that the Statute assigns the General Counsel responsibility for investigating and prosecuting alleged unfair labor practices; authority and responsibility for employees of the General Counsel, including those in the Authority's Regional Offices; and "such other powers of the

Authority as the Authority may prescribe." These provisions collectively establish the General Counsel as an independent entity only insofar as specifically provided by Congress or delegated by the Authority and independent budgetary authority has not been so vested in the General Counsel. To contend that the General Counsel possesses independent budgetary authority on the grounds that he possesses certain independent substantive labor-management authority under the Statute is an argument that could likewise be applied to the Federal Service Impasses Panel, the office of each Member of the Authority and to some extent to the office of Administrative Law Judges within the Authority. Frazier said that the practice of the NLRB wherein responsibilities for the agency's administrative functions falls within the purview of the General Counsel is not an apt comparison. Even though the statutory functions and general organizational set-up of the NLRB and FLRA are similar, the two agencies are intrinsically different when it comes to internal administrative functions. The FLRA by Statute is required to have an Executive Director, and more importantly the FLRA's Chairman is by Statute designated as chief executive and administrative officer, neither of which find a parallel in the National Labor Relations Act. For reasons of their own, the Members of the NLRB decided to place agency administrative functions under the Board's General Counsel. Those reasons, according to Frazier, are irrelevant to considerations of proper administrative functioning of the FLRA.

Frazier believes that a separate budget authority for OGC is unnecessary and would interfere with effective financial management within the agency. Furthermore, he is not aware of any action by the Chairman or the Members with respect to budget matters which has interfered with the substantive statutory authority of the GC to investigate and prosecute ULP's. He also believes that sufficient checks exist on the Chairman's authority to prevent him from interfering with the General Counsel's statutory responsibilities, including review of the Authority's budget and oversight by the Office of Management and Budget and the White House and by Congressional Appropriation and Oversight Committees.

An abbreviated version of Member Frazier's views is on p. 5 of the final report.

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424

October 15, 1984

MEMORANDUM

TO: HENRY B. FRAZIER III
Acting Chairman

THROUGH: Jan K. Bohren
Executive Director/Administrator

FROM: Ruth E. Peters
Solicitor

SUBJECT: The Role of the Chairman of the FLRA Regarding Budget Matters

This memorandum concerns the responsibilities of the Authority's Chairman regarding budget matters, with specific reference to certain views expressed by the General Counsel in this area.

In this latter regard, the General Counsel has expressed the view that determinations made by the Chairman and the Authority's Comptroller regarding budget development and execution usurp his role in this area as an independent General Counsel under the Statute. The General Counsel's particular concern appears to be that he should have the authority to make final decisions as to the adjustments in his internal budget request, and the independence to make final decisions concerning the expenditure of funds intended to enable him to carry out his responsibilities under the Statute. The General Counsel appears to be further concerned in this regard that determinations on these budget matters, presently made by the Chairman and the Comptroller, jeopardize the separation within the Authority under the Statute between the prosecutorial functions of the General Counsel and the Authority's adjudicative processes. The General Counsel has previously expressed similar concerns regarding the system of allowances established by the Authority's Administrative Control Of Funds regulation (FLRA 2520.1). Accordingly, the General Counsel appears to propose in substance that he be given the authority to develop and execute his own budget, independent of the Authority's Chairman, covering his own office and the regions.

For the reasons set forth below, we conclude that the General Counsel's proposal for independent authority, and his related concerns, do not take into account the nature of the Chairman's and the General Counsel's responsibilities under the Statute, and in particular are not consistent with the Chairman's statutorily-vested responsibility as the agency's chief executive and administrative officer.

DISCUSSION

As originally enacted, the Statute generally conferred on the three Members of the Authority, as collegial body, the overall responsibility for administrative and managerial functions of the Authority. Thus, section 7105(a)(2)(I) of the Statute authorized the Members to "take such . . . actions as are necessary and appropriate to effectively administer the provisions" of the Statute.

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As to the General Counsel, section 7104(f) of the Statute described that office, setting forth the terms of the General Counsel's appointment and removal, as well as delineating the General Counsel's substantive labor-management relations functions. In this latter regard, the Statute assigns the General Counsel responsibility for investigating and prosecuting alleged unfair labor practices, as well as exercising "such other powers of the Authority as the Authority may prescribe." 5 U.S.C. § 7104(f)(2(C).1/ In addition, section 7104(f)(3) assigns the General Counsel authority and responsibility for employees in the office of the General Counsel, including those in the Authority's regional offices.

The Civil Service Miscellaneous Amendments Act of 1983, Pub. L. No. 98-224, 98 Stat. 47 (1983), provided a specific designation of the Authority's Chairman as the focus of authority and responsibility for FLRA administrative functions. The Act amended section 7104(b) of the Statute to establish the Chairman as "the chief executive and administrative officer of the Authority." Id., sec. 3. The principal purpose of this change in the Authority's structure was to establish in "a single individual," or "a central person" (the Chairman), responsibility and accountability for administrative matters within the Authority. See 130 Cong. Rec. S1319 (daily ed. February 9, 1984)(remarks of Senator Stevens); 129 Cong. Rec. S10609 (daily ed. July 21, 1983)(remarks of Senator Stevens). This altered the previously existing statutory administrative control system, under which final administrative authority and responsibility was exercised collegially among all three Members.2/

Pursuant to this amendment, the Chairman now exercises authority over and has responsibility for matters such as Authority fiscal management, as well as personnel and property management, general administrative support services, procurement and contracts, personnel, property, and document security, and management analysis and program evaluation. 130 Cong. Rec. S1319 (daily ed. February 9, 1984)(remarks of Senator Stevens); 129 Cong. Rec. H10018 (daily ed. November 16, 1983)(remarks of Congresswoman Schroeder). On the other hand, this exclusive authority granted the Chairman by these amendments was specifically intended not to intrude into areas of substantive decisionmaking, such as that represented by the equal and independent authority of the other two Members to carry out their substantive decisionmaking responsibilities under the Statute. 130 Cong. Rec. S1320 (daily ed. February 9, 1984)(remarks of Senator Bingaman); 129 Cong. Rec. H10019 (daily ed. November 16, 1983)(remarks of Congresswoman

1/ Appendix B to the Authority's regulations, 5 C.F.R. 214-216 (1984), delegates certain case-related matters to the General Counsel. This appears to be the only formal delegation to the General Counsel by the Authority pursuant to section 7104(f)(2)(C).

2/ Certain administrative functions had been delegated to the Chairman by the remaining two Authority Members in May 1982.

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Schroeder). This statutory amendment and the accompanying legislative history are a clear demonstration that Congress intended the Authority's Chairman to have final responsibility for financial management, including control of budget matters, for the entire agency.

The legislative history likewise clearly reflects Congress' intent to centralize, among other things, financial management responsibilities in the Chairman. Thus, the legislative history refers, e.g., to "one individual [who] is responsible and accountable for the sound management of the Authority," 130 Cong. Rec. S1319 (daily ed. February 9, 1984)(remarks of Senator Stevens); and to "one central person accountable for administrative matters," 129 Cong. Rec. S10609 (daily ed. July 21, 1983)(remarks of Senator Stevens). The legislative history also specifically references fiscal management as one of the matters within the Chairman's authority and responsibility. E.g., 130 Cong. Rec. S1319 (daily ed. February 9, 1984)(remarks of Senator Stevens); 130 Cong. Rec. S1320 (daily ed. February 9, 1984)(remarks of Senator Bingaman). Such centralized decisionmaking in the administrative area as devised by Congress enables the agency, among other things, to act with efficiency and flexibility in meeting changing circumstances facing the agency.3/

Contrary to Congress' clearly stated intent in this regard, the General Counsel's suggestion that he have independent control over budget matters concerning his office and the regions would fragment and diffuse decisionmaking in the budget area. It is precisely this sort of divided administrative authority that Congress sought generally to eliminate from the Authority's internal decisionmaking processes when it enacted the 1983 amendments. See 130 Cong. Rec. S1319 (daily ed. February 9, 1984)(remarks of Senator Stevens) (amendment "would eliminate ambiguity as to who has responsibility and authority for the management of internal administrative matters . . . ."); id., ("the agency would have a single individual to look to for leadership and direction"); 130 Cong. Rec. S1320 (daily ed. February 9, 1984)(remarks of Senator Bingaman) (amendment needed to "clarify confusion" with respect to administrative authority within the FLRA); 129 Cong. Rec. H10018 (daily ed. November 16, 1983)(remarks of Congresswoman Schroeder) (referring to GAO report critical of shared authority and responsibility regarding agency procurement activities); 129 Cong. Rec. S10609 (daily ed. July 21, 1983)(remarks of Senator Stevens) (reporting "great friction, confusion, and delay" attendant upon shared decisionmaking in the

3/ This need to promote managerial flexibility by means of centralized administrative control is also reflected in the Authority's Administrative Control of Funds regulation, FLRA 2520.1 (May 1, 1984). This regulation establishes the Chairman as having responsibility for the agency's financial plan (sec. 5).

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administrative area).4/ Indeed, there are several entities within the agency which, like the General Counsel, have substantive functions that are exercised independent from the Authority.5/ Yet to allow each of them to operate independently in budget affairs as well would produce the kind of administrative inefficiencies which Congress sought to avoid in enacting the 1983 amendments.

Of course, the Chairman's exclusive authority over, among other things, budget matters may not extend to the point where it prevents a component of the agency such as the General Counsel from fulfilling its statutory function. In this regard, the legislative history reflects clearly Congress' intent that the Chairman's exclusive authority and responsibility as chief executive and administrative officer not prevent the exercise of existing authority within the FLRA relating to substantive labor-management relations matters. E.g., 129 Cong. Rec. S10609 (daily ed. July 21, 1983)(remarks of Senator Stevens); 130 Cong. Rec. S1320 (daily ed. February 9, 1984)(remarks of Senator Bingaman); 129 Cong. Rec. H10018-19 (daily ed. November 16, 1983)(remarks of Congresswoman

4/ The view that the General Counsel does not possess independent authority in areas such as budget administration is also supported by provisions of the Statute other than the 1983 amendments. Thus, as set forth at p. 2, above, the General Counsel's independence under the Statute is primarily limited to case-related matters such as issuance of unfair labor practice complaints, and not administrative matters such as budget administration. Further, while the General Counsel also has "authority over, and responsibility for," employees in the regions as well as his own office under section 7104(f)(3), this pertains to overall supervision of the work of these employees. It cannot be read to establish independent power in the General Counsel in areas such as budget administration. Finally, any responsibilities of the General Counsel beyond those just enumerated (i.e., ULP investigation and complaint issuance, and supervision of employees) are only such "as the Authority may prescribe," under section 7104(f)(2)(C). These provisions, taken as a whole, establish the General Counsel as an entity that has independence only insofar as established by Congress or delegated by the Authority. Budget administration is not a responsibility that has been so established in the General Counsel.

Further support for this view is found in the administrative practices that have developed within the agency since its inception. Thus, the Authority, either collegially through its Members or through its Chairman, has exercised supervision over administrative support functions such as personnel, procurement, etc. These functions have in turn been provided to all Authority components, including the General Counsel. This practice further indicates the primacy of the Authority over agency components in nonsubstantive administrative matters.

5/ E.g., the Federal Service Impasses Panel, the Foreign Service Labor Relations Board, and the Foreign Service Impasse Disputes Panel.

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Schroeder). Within this limit, however, the Chairman possesses final and exclusive authority, responsibility and accountability concerning, among other things, Authority budget matters.

The General Counsel's concerns regarding his role in the budget process do not reflect that the Chairman has exceeded the authority and responsibility granted to the Chairman by the Statute as amended. The General Counsel has not asserted, nor does it otherwise appear, that the Chairman's exercise of final authority over FLRA budget matters, either with respect to the formulation of the budget or to its execution, has diminished the General Counsel's independent prosecutorial authority to investigate and prosecute unfair labor practice complaints, or his authority to manage his staff. Rather, the General Counsel's concerns simply indicate that the Chairman has made determinations within the scope of his responsibilities as to the composition and administration of the Authority's budget. Such determinations by the Chairman concerning the agency's fiscal management leave untouched the General Counsel's independent statutory authority concerning unfair labor practice matters and the management of his own staff, and constitute a proper exercise of the Chairman's powers under the Statute as amended.6/

CONCLUSION

Based upon the language and legislative history of the Statute as amended, it is apparent that Congress intended the Chairman to exercise exclusive authority and responsibility regarding numerous aspects of internal FLRA administrative decisionmaking, including that pertaining to FLRA budget matters. Similarly, Congress designated the Chairman as the individual accountable for the Authority's sound management. The Chairman may not take administrative actions which would detract from the authority of the other Members, or components of the Authority such as the General Counsel, regarding substantive labor-management relations issues.

6/ To the extent that the General Counsel seeks support for his proposal in an analogy to the structure of the National Labor Relations Board, such an analogy would not appear to be helpful chiefly because the NLRA does not contain any provisions comparable to those in section 7104(b) of the Statute as amended, establishing the Chairman of the Authority as the agency's chief executive and administrative officer. Furthermore, several agencies have internal components with substantive functions distinct from those of the parent agency, but which nevertheless subject their budget requests to the internal agency review process. Examples include the Benefits Review Board in the Department of Labor, the Board of Veterans Appeals in the Veterans Administration, and agency boards of contract appeals.

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Nevertheless, the Chairman is charged with exercising his administrative authority to assure the efficient and effective operation of the FLRA, in order to prevent the reoccurrence of the diffused administrative decisionmaking which originally led Congress to amend the Statute in 1983. The Chairman's exercise of final decisionmaking authority on FLRA budget matters is one aspect of this authority which the Chairman must necessarily exercise to maintain the kind of flexibility in administering the FLRA necessary to meet the agency's needs.

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RESPONSE TO FORMER GENERAL COUNSEL'S ALLEGATION ON PAGE 5

Now on p. 4.

p. 5 ALLEGATION: --In 1981, the Chairman and the Members proposed closing three OGC regional offices as a budget-cutting measure without consulting the General Counsel. This, the former General Counsel told us, would have "totally emasculated" OGC. The proposal was eventually dropped when the General Counsel objected.

RESPONSE: The Chairman and Members did not propose closing regional offices without consulting with the General Counsel. A more accurate description of these events is as follows: In 1981, responding to imposed budget reductions, the then Executive Director proposed to the Members and the General Counsel a package of spending reduction actions including a proposal to close three regional offices. The Executive Director formulated his proposals without consultation with the General Counsel or with the Members. The former General Counsel strongly opposed the proposal, which he states would have "literally emasculated" his office and the proposal was dropped.

See comment 5.

-2-

RESPONSES TO GENERAL COUNSEL'S ALLEGATIONS ON PAGES 5 AND 6

Now on p. 4.

p. 5 ALLEGATION: --In 1983, the Chairman delegated to OGC's regional directors the authority to issue decisions and orders in representation cases. Despite this increased workload and a request from his office for additional staff and budget, the General Counsel said that the Chairman did not provide additional resources. This, he said, indirectly affected his ability to discharge his responsibilities in a timely and effective manner.

RESPONSE: At the time the authority to issue decisions and orders in representation cases was delegated to the Regional Directors, it is our understanding that Chairman Mahone told General Counsel Miller that there would be no initial allocation of resources to his office until sufficient increases in workload could be demonstrated to justify the proposed additional resources.

See comment 6.

Now on p. 4.

pp. 5-6 ALLEGATION: -- In 1984, the Chairman eliminated funds for OGC travel, training, and equipment purchases from the FY 1986 budget request. According to the General Counsel, this was done without an opportunity for discussion or modification by his office and usurped his statutory authority.

RESPONSE: In preparing the FY 1986 budget, the Acting Chairman decided that the agency would fully fund personnel compensation and benefits for all allocated positions. To meet the OMB Policy Level, it was necessary to fund other object classes at the reduced level submitted by managers (including the General Counsel). The General Counsel was advised of this decision by memorandum of August 28, 1984. Subsequently, by memorandum of November 14, 1984, the Acting Chairman was advised by the Executive Director that the General Counsel had been informed that funds for training could be restored (as long as the OMB Policy Level was met) by revising other object classes.

See comment 7.

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
WASHINGTON, D.C. 20424

January 9, 1986

OFFICE OF THE CHAIRMAN

Ms. Rosslyn Kleeman
Associate Director of Civilian
Personnel Matters
General Accounting Office
441 G Street, NW.
Washington, D.C. 20548

Dear Ms. Kleeman:

It was a pleasure to meet with Ms. Jenny Stathis, Mr. Curtis Copeland, and you yesterday. I welcome such opportunities to discuss issues of mutual interest.

I must, however, express my concern about the interpretation of the Chairman's chief executive role which was articulated at the meeting. Section 7104(b) of the Federal Service Labor-Management Relations Statute was amended by the Civil Service Miscellaneous Amendments Act of 1983 to include the following sentence: "The Chairman is the chief executive and administrative officer of the Authority." I understand that GAO considers the use of "Authority" in that sentence to address the actions taken by the three Members only rather than the FLRA as a whole. Such an interpretation does not comport with my understanding of the provision. It also prolongs the long-standing dysfunctions in the agency stemming from this issue.

The statutory amendment of section 7104(b) was designed to establish in one person responsibility and accountability for administrative matters within the FLRA. This ended the previous system whereby general administrative control over the agency was exercised by the three Members. Since the legislative history demonstrates an intention to consolidate the existing authority in one person, the use of the term "Authority" rather than "FLRA" in the amendment itself would seem to be of little significance. In addition, it should be noted that section 7103(a)(6) of the Statute defines "Authority" as "the Federal Labor Relations Authority described in section 7104(a)[.]" Similarly, section 7104(f)(1) refers to the "General Counsel of the Authority" and section 7119(c)(1) provides that the Federal Service Impasses Panel is an "entity within the Authority[.]" These uses of "Authority" seem to be clear references to the agency as a whole, and thus, are consistent with my understanding of the meaning of that term in section 7104(b).

The legislative history also demonstrates that Congress intended to centralize administrative responsibilities for the entire agency in the Chairman. For example, Senator Stevens stated that enactment of the amendment would mean that "the agency would have a single individual to look to for leadership and direction." 130 Cong. Rec. S1319 (daily ed. February 9, 1984). Similarly, in discussing the proposed legislation,

Congresswoman Schroeder noted problems encountered under the previous system and referred to a GAO study which concluded that many of the problems "can be traced back to authority and responsibility being shared equally among the three members, rather than the designated chairman being the agency head." 129 Cong. Rec. H10018 (daily ed. November 16, 1983). The absence of any indication that Congress intended to fragment administrative responsibility for the agency's components by making officials other than the Chairman accountable to Congress for such matters further demonstrates Congress' expectation that the Chairman would be the chief executive and administrative officer of the agency.

Of course, the statutory amendment relates to administrative matters only and did not affect the exercise of existing authorities relating to substantive labor-management relations matters. In this regard, Senator Stevens stated that the amendment was intended to preserve "equality and independence for each of the three Authority members in the performance of their statutory responsibilities." 130 Cong. Rec. S1320 (daily ed. February 9, 1984). In addition, the General Counsel, the Federal Service Impasses Panel, the Foreign Service Labor Relations Board, and the Foreign Service Impasse Disputes Panel also have substantive functions which are exercised independently from the Authority Members. Further, as noted by Congresswoman Schroeder, under the amendment "the General Counsel would continue to have wide authority over his or her own staff and over the regional staff[.]" 129 Cong. Rec. H10019 (daily ed. November 16, 1983). In fact, the General Counsel's authority over staff members in his office as well as in the various regional offices is specifically set forth in section 7104(f)(3) of the Statute. The Federal Service Impasses Panel's authority to appoint an Executive Director of the Panel is likewise set forth in section 7119(c)(4). These grants of authority were not affected by the amendment. There is no indication, however, that any component of the Authority was vested with any new function or responsibility by the legislation. With respect to the General Counsel, the Statute itself provides in section 7104(f)(2)(C), that any powers in addition to those relating to the investigation and prosecution of unfair labor practices or the supervision of employees shall be only "as the Authority may prescribe."

I want to emphasize that my concerns over this issue are not personal ones. Rather, they are institutional concerns in furthering Congressional intent with respect to accountability within the FLRA. These matters have troubled the FLRA for a long time and I hope that any disputes in this area can be resolved swiftly.

Sincerely,

Jerry L. Calhoun

An abbreviated version of Chairman Calhoun's comments is on p. 5 of the final report.

SUGGESTED TECHNICAL CORRECTIONS TO GAO DRAFT:

P. 2 DELETE: OGC supervises the FLRA regional offices, investigates and prosecutes unfair labor practice (ULP) matters, and is responsible for issues regarding the representation of federal employees.

SUBSTITUTE: OGC supervises the FLRA regional offices, investigates and prosecutes unfair labor practice (ULP) matters, and conducts elections and issues intial decisions in representation matters involving federal employees. Decisions and Orders by the Regional Directors are appealable to the Authority.

See comment 8.

DELETE: The Office of Administrative Law Judges conducts hearings and prepares decisions in ULP cases.

SUBSTITUTE: The Office of Administrative Law Judges conducts hearings and prepares decisions in unfair labor practice cases and certain representation cases. (See Authority's Rules and Regulations, 5 CFR Part 2400, [hereinafter Reg.] § 2422.21(g) and (i).)

See comment 9.

Now on p. 3.

p. 4 DELETE: That delegation was unsuccessful, however, as many administrative and management issues continued to be decided by the Members, not by the executive director. On May 20, 1982, after questions arose regarding procurement practices within the Authority, the Members of the Authority delegated to the chairman responsibility and authority for the management of internal administrative matters.[2]

The FLRA Solicitor subsequently determined that a change in the statute was necessary to delegate administrative powers to the Chairman.

SUBSTITUTE: That delegation was unsuccessful, however, primarily because the Executive Director found himself trying to satisfy four Presidential appointees, each with statutory responsibilities. With regard to such responsibilities, the Solicitor of the Authority had advised the Members on January 23, 1979, that, "Absent any express reference in a statute or any other indication of legislative intent . . . the chairman of the agency is not clothed with any special powers and duties . . . ." Thus, each Member was considered statutorily responsible for carrying out the powers and duties of the Authority including those pertaining to administrative matters. The Statute also specifically provided for certain responsibilities of the General Counsel, including, among other things, the "direct authority over, and responsibility for, all employees in the office of the General Counsel, including employees of the General

Counsel in the regional offices of the Authority." A Memorandum Describing the Authority and Assigned Responsibilities of the General Counsel which stated that "the Authority will provide such administrative support functions, including . . . financial management . . . as are required by the General Counsel . . ." was promulgated on July 25, 1979 and remains an appendix in the published rules and regulations of the FLRA.

On May 20, 1982, the Members agreed to consolidate the authority and responsibility for internal administrative functions in the Office of the Chairman. Nevertheless, that delegation was not a complete answer because, while the Members might delegate authority and responsibility, in the final analysis under the literal wording of the Statute, they were all accountable. The Statute was amended to consolidate authority, responsibility and accountability in the Office of the Chairman.

See comment 10.

Now on p. 7.

p. 9 DELETE: The amendment was enacted because of administrative problems regarding the procurement practices of the two members and the Chairman of the Authority.

SUBSTITUTE: The amendment was enacted generally to eliminate divided administrative authority from the Authority's internal decisionmaking, according to statements in the legislative history. See 130 Cong. Rec. S1319 (daily ed. February 9, 1984) (remarks of Senator Stevens) (amendment "would eliminate ambiguity as to who has responsibility and authority for the management of internal administrative matters . . . ."); id., ("the agency would have a single individual to look to for leadership and direction"); 130 Cong. Rec. S1320 (daily ed. February 9, 1984) (remarks of Senator Bingaman) (amendment needed to "clarify confusion" with respect to administrative authority within the FLRA); 129 Cong. Rec. H10018 (daily ed. November 16, 1983) (remarks of Congresswoman Schroeder) (referring to GAO report critical of shared authority and responsibility regarding agency procurement activities); 129 Cong. Rec. S10609 (daily ed. July 21, 1983) (remarks of Senator Stevens) (reporting "great friction, confusion, and delay" attendant upon shared decisionmaking in the administrative area).

See comment 11.

Now on pp. 8 and 9

p. 11-12

DELETE: If settlement efforts fail, a complaint is issued and the case is forwarded to the Authority for a decision. If the facts in the case are in dispute, however, the case is first heard by an Administrative Law Judge (ALJ), who issues a decision that is appealable to the Authority.

SUBSTITUTE: If pre-complaint settlement efforts fail, a complaint is issued. If the facts in the case are in dispute, the case is heard by an Administrative Law Judge (ALJ) who issues a decision to which exceptions may be taken before the Authority for a decision. (See Reg. § 2423.26.) If no exceptions are taken, the decision of the ALJ becomes the decision of the Authority without precedential significance. (See Reg. § 2423.29(a).) The Regional Director may determine that no material issue of fact exists in a case and, with agreement of all parties, transfer it, along with a stipulation of facts, directly to the Authority for decision without hearing. (See Reg. § 2429.1.) A complaint may be settled even after a complaint is issued, in accordance with Authority regulations. (See Reg. § 2423.11(c) and (d).)

See comment 12.

Now on p. 9.

p. 12

DELETE: For example, in cases in which a complainant files both a ULP charge and a negotiability appeal based on the same incident, OGC holds the ULP charge until the negotiability case is resolved by the Authority.

SUBSTITUTE: For example, in cases where a labor organization files both a ULP charge and a negotiability appeal involving the same negotiability issue, the Authority and OGC ordinarily will not process both simultaneously. The labor organization must select under which procedure to proceed and further action under the other will ordinarily be suspended. (See Reg. § 2423.5 and § 2424.5.)

See comment 13.

Now on p. 10.

p. 13

DELETE: Decisions and orders of the regional directors may be appealed to the Authority, which may dismiss the appeal on procedural grounds or issue a decision on the merits of the petition.

SUBSTITUTE: Decisions and Orders of the Regional Directors are final except that a party may file an application for review with the Authority which may be granted only where it appears that compelling reasons exist for doing so. The Authority may thus dismiss such an application on procedural grounds, deny it, or undertake to grant review and rule on the issues involved. (See Reg. § 2422.1 .)

See comment 14.

Now on p. 11.

p. 15 DELETE: An exclusive representative may propose that a particular matter be collectively bargained, while an agency may contend that the matter is not negotiable because it conflicts with federal law, government-wide rules or regulations, or an agency regulation for which there is a compelling need.

SUBSTITUTE: An exclusive representative may propose that a particular matter be collectively bargained, while an agency may contend that the matter is outside the duty to bargain because it conflicts with Federal law, government-wide rule or regulation, or agency regulation for which a compelling need exists or because the matter is permissibly negotiable and the agency has elected not to bargain. (See, e.g., section 7117 and 7106(b)(1) of the Statute.)

See comment 15.

The following are GAO's comments on the Federal Labor Relations Authority Members' letter dated February 10, 1986.

GAO Comments

1. As stated on pages 4 and 5 of our report, the incidents referred to by the Chairman and the Member were recited by the former and current General Counsels, who confirmed that they are accurate depictions of their views. (See Comments 5-7.) Our purpose in including these incidents in the report was not to determine why they had occurred or whether they had been appropriate. Rather, our intent was to illustrate why the General Counsels believe that there is a problem. Similarly, we did not determine the appropriateness of statements that Chairman Calhoun or Member Frazier made in support of their positions but reported their statements as provided.

2. We did not change this section of the report because we believe that NLRB and MSPB are the most relevant examples of similar agencies which have addressed a similar problem. As stated on page 6 of our report, the Congress specifically modeled the independent status of the General Counsel of FLRA after the independent status of the General Counsel of NLRB. Further, much of FLRA's enabling legislation is modeled after that of NLRB and many of its procedures, practices, and policies are virtually identical. MSPB was offered as an example because its independent prosecutor, the Special Counsel, was also modeled after the General Counsel of NLRB. Thus, these agencies were suggested as models because the Congress had already referred to them as relevant models.

In addition, we believe that analysis of the prosecutorial functions of FTC and SEC, suggested by the Chairman and the Member as agencies which should have been considered in the report, reinforces our conclusions regarding the unique status of the General Counsels of FLRA and NLRB and the Special Counsel of MSPB as independent prosecutors. The General Counsels of FTC and SEC perform the customary staff function of acting as chief legal advisors to the Chairmen and Commissioners. Their positions are not statutory appointments; they do not have exclusive and independent statutory authority to initiate an adjudicatory proceeding; and they have not been accorded direct statutory authority and responsibility over employees of the Office of the General Counsel. In contrast, the General Counsels of FLRA and NLRB and the Special Counsel of MSPB are all statutory appointees with exclusive and independent authority to initiate an action under applicable statutes and with direct statutory control over their staffs. Furthermore, unlike the Members of

FTC and SEC, the Chairmen and Members of FLRA, NLRB, and MSPB perform no prosecutorial functions. Thus, we do not believe that the analysis is "incomplete" because other government agencies like FTC and SEC are not addressed in the report.

3. Member Frazier's complete views are included in this appendix and are excerpted in the body of the report on page 5. We have also included Chairman Calhoun's January 9, 1986, letter in this appendix and excerpted from that letter on page 5 in the body of our report to state the Chairman's position as of the date of his letter. In their entirety, Member Frazier's views and Chairman Calhoun's letter do not change our conclusion that the administrative role of the General Counsel is unclear.

4. We have changed the draft report's statement, "He also said that one person should be in charge of administrative matters in a small agency like FLRA. . ." to reflect more explicitly the Chairman's concern about duplication of effort and expense. We note, however, that the National Labor Relations Board, which has separated budget authority, addressed this potential concern by operating a single administrative unit that services the General Counsel and the Board.

5. We contacted the former General Counsel, and he told us that he "firmly stands behind" the draft report's account of these events. Therefore, since our intent was to reflect his account of these events, we did not change this section in the final report. (See attachment 2 in appendix IV for a copy of the former General Counsel's memo of December 21, 1981, regarding this proposed closing of required offices. See also page 55 in appendix IV for the General Counsel's comments regarding this proposal.)

6. As stated in his comments in appendix IV, the General Counsel told us that the draft report accurately reflected his statements regarding this incident. Therefore, we did not change this section in the final report. (See page 56 in appendix IV for the General Counsel's views on this incident.)

7. As stated in his comments in appendix IV, the General Counsel told us that the draft report accurately reflected his statements regarding this incident. Therefore, we did not change this section in the final report. (See page 56 in appendix IV for the General Counsel's views on this incident.)

8. The final report generally reflects the suggested substitute language on page 2.

9. The final report generally reflects the suggested substitute language on page 2.

10. We did not change this section of the report because we believe that it is an accurate portrayal of FLRA's attempts to clarify administrative responsibilities within the agency. As noted in our prior report, Deficient Management Practices at the Federal Labor Relations Authority Action Being Taken(GAO/PLRD-83-24, February 2, 1983, p.3), the September 1979 delegation of authority from the Members to the executive director was not successful because, "in practice, many administrative and management issues were not decided by the executive director but rather were decided by the [M]embers."

Furthermore, the suggested substitute language omits any reference to questionable procurement practices that precipitated the May 20, 1982, delegation of authority from the Members to the Chairman. In testimony on those procurement practices before the Senate Governmental Affairs Committee's Subcommittee on Federal Expenditures, Research, and Rules, Chairman Ronald W. Haughton, Member Leon B. Applewhaite, and Member Frazier proposed that delegation of authority. Thus, we believe that mention of those questionable practices is relevant to the chronology of actions taken by FLRA to attempt to clarify administrative responsibility within the agency.

Neither did we change that section of the report that noted why a change in the statute was necessary. The suggested language omits reference to the Solicitor's determination that a statutory change was needed. Also, the suggested language does not agree with testimony by Chairman Barbara J. Mahone on November 1, 1983, before the House Committee on Post Office and Civil Service's Subcommittee on Civil Service. In her testimony, Chairman Mahone said that "the Solicitor's office of the agency made a determination that statutorily there were certain administrative powers which could not be delegated to the chief executive officer. Consequently, certain administrative matters were reserved to the three members. And so with respect to the Chairman as the head of the agency, I think it would eliminate the ambiguity that currently exists in the statute." Thus, we believe that the Solicitor's determination was an important factor and that the Solicitor determined that there were certain powers "which could not be delegated," not that they "might be delegated" as suggested by the Chairman and the Member's

comments. We did, however, change the word "subsequently" to "had previously" in the final report because the Solicitor's opinion occurred before the 1982 delegation.

11. Again, the proposed substitute language eliminates reference to the questionable procurement practices at FLRA that illustrate the divided administrative authority in the agency referred to in Chairman Calhoun and Member Frazier's comments. We believe that the legislative history clearly indicates that the impetus for the May 20, 1982, delegation of authority and the amendments to the agency's enabling legislation were those procurement practices. Therefore, we believe that the draft report is accurate in stating that the amendment was enacted because of administrative problems regarding the procurement practices of the two Members and the Chairman.

12. The final report generally reflects the suggested substitute language on pages 8 and 9.

13. The final report generally reflects the suggested substitute language on page 9.

14. The final report generally reflects the suggested substitute language on page 10.

15. The final report generally reflects the suggested substitute language on page 11.

Advance Comments From the Federal Labor Relations Authority General Counsel

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
500 C STREET SW. ● WASHINGTON, D.C. 20424

February 25, 1986

OFFICE OF THE GENERAL COUNSEL

Mrs. Jennie Stathis
Group Director
General Government Division
General Accounting Office
441 G Street, NW., Room 3150
Washington, D.C. 20548

Dear Mrs. Stathis:

I am writing in response to your report on the operations of the Federal Labor Relations Authority, a draft of which I received on January 27, 1986. The report reviewed the role of the General Counsel, and secondly, examined the Agency's caseload and case processing. At a meeting to discuss this report on February 4, 1986, I stated that with minor exceptions the report accurately reflected my views and was otherwise factually correct. The statistical data included in the report is accurate and the analysis of all data gathered is, in my view, appropriate and sound. I would like to commend the work of Mr. Curtis Copeland and his staff for their objective report which was completed without disruption to our ongoing mission requirements.

My comments are directed solely at the role of the General Counsel and will focus on the independence of the General Counsel from both a legal and historical concept. Secondly, I would like to give illustrations of institutional discrimination, i.e., certain arbitrary actions by the Authority acting through the Chairman and the Comptroller against the General Counsel in the budgetary area which have resulted in interference with the General Counsel's statutory authority.

A. The Enabling Statute of the Federal Labor Relations Authority Does Not Empower the Chairman of the Authority With Any Special Power, Duties or Control Over the Budgetary and Personnel Authority of the General Counsel of the Authority.

The position of the General Counsel of the Federal Labor Relations Authority was initially established by section 302 of Reorganization Plan No. 2 of 1978 (3 C.F.R. 323, 327 (1979)), reprinted in 5 U.S.C. app., at 357, 359 (Supp. 111 1979). The General Counsel position was continued by the Civil Service Reform Act of 1978 (Pub. L. No. 95-454 § 701, 92 Stat. 1111, 1196, 5 U.S.C. § 7104(f) (Supp. IV, 1980)) and also known as the Federal Service Labor-Management Relations Statute (Statute).

Section 7104(f) of the Statute provides that the General Counsel is appointed by the President with the advice and consent of the Senate for a term of five years and serves at the pleasure of the President. The General Counsel has the exclusive authority "to investigate alleged unfair labor practices" and "to file and prosecute complaints" and "shall have direct authority over, and responsibility for, all employees in the Office of General Counsel, including employees . . . in the regional offices of

the Authority." The General Counsel may "exercise such other powers of the Authority as the Authority may prescribe."

The Reorganization Plan and Civil Service Reform Act make clear the separation and distinct responsibilities of the two entities; i.e., the Federal Labor Relations Authority (Authority) and the General Counsel of the Authority. It is clear that Congress intended that the General Counsel alone be responsible for the discharge of the mission of the Office of the General Counsel. 1/ The function of the General Counsel should not and may not be shared with the Authority, but rather a cooperative relationship should be designed to effectively implement the Statute. The legislative history of the Statute clearly conveys the Congressional intent to establish a General Counsel independent from the supervision, control or direction of the Authority.

Indeed, the absence in the Authority's enabling statute of any special powers, duties or control of the Chairman of the Authority over the other two members of the Authority, let alone over the General Counsel of the Authority, was recognized by the Authority's Solicitor soon after the creation of the Authority. Thus, by memorandum dated January 23, 1979 2/ from the then Solicitor of the Authority to the Members of the Authority, the Members were advised that "[n]either the Statute nor the [Reorganization] Plan sets forth any specific powers or duties which are assigned to or vest by reason of the designation as Chairman." The Solicitor further concluded that "a review of the pertinent legislative history of the Statute and of the Plan fails to disclose any consideration of the issue concerning the powers and duties of the Chairman as distinguished from those of the other members of the Authority." Accordingly, absent any express reference in the Statute or any other indication of legislative intent, and based upon the view of the Justice Department, the Authority Members were advised that "the chairman of the agency is not clothed with any special powers and duties by reason of his designation as chairman, except for the authority to preside at meetings of members of the agency." Indeed, the second Chairman of the Authority recognized the need to amend the Statute so as to delegate administrative powers from the other two Authority Members to the Chairman of the Agency. Thus, in testifying before the Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives,

1/ H.R. Rep. No. 95-1403, 95th Cong., 2d Sess. (1978), at 42, reprinted in Subcommittee on Postal Personnel and Modernization of the Committee on Post Office and Civil Service, 96th Cong., 1st Sess., Legislative History of the Federal Service Labor-Management Relations Statute, Title VII of the Civil Service Reform Act of 1978 (hereinafter Legislative History), at 688. S. Rep. No. 95-969, 95th Cong., 2d Sess. (1978), at 99, reprinted in Legislative History, at 759, wherein the Senate Committee stated that it was its intent "that the Office of the General Counsel will be an independent organizational entity within the Authority, and thereby maintain a separation between the prosecutorial and adjudicatory functions of the Authority."

2/ See Attachment #1.

concerning the subsequently enacted Civil Service Miscellaneous Amendments Act of 1983, Chairman Mahone stated that "[w]hen the statute was enacted, the enabling legislation did not indicate the relationship of the Chairman to the other two members. Thus, the role of the Chairman was technically undefined, particularly as to who had the administrative authority in the agency." 3/ Similarly, in testifying before the Subcommittee on Civil Service, Post Office, and General Services of the Committee on Governmental Affairs, United States Senate, Chairman Mahone testified that "[t]he enabling legislation concerning the Federal Labor Relations Authority does not indicate the relationship of the Chairman to the other two members." 4/ Further, despite the delegation in May 1982 from the two Members to the Chairman over certain internal administrative functions, the then Chairman of the Authority testified before the House Subcommittee that an amendment to the Statute was still required. 5/

> If you recall, a little over a year ago the other members delegated certain administrative responsibilities to the Chairman of the Authority. But in addition, because the statute specifically excluded a chief executive officer or a designated head of the agency, the Solicitor's Office of the agency made a determination that statutorily there were certain administrative powers which could not be delegated to the chief executive officer. Consequently, certain administrative matters were reserved to the three members. And so with respect to the chief executive officer, if the statute is amended to designate the Chairman as the head of the agency, I think it would eliminate the ambiguity that currently exists in the statute. The result would be that with respect to all administrative matters someone would be accountable for the day-to-day operations of the Authority. There are certain personnel matters, certain financial matters that we still act on as a group rather than having a single individual who would be held responsible for making those decisions and would be held accountable.

Consistent with the above testimony, in a letter to the Director of the Office of Management and Budget dated February 24, 1984, regarding the enrolled bill, H.R. 4336, Member Frazier, on behalf of the Chairman of the

3/ Hearings before the Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives, 98th Cong., 1st Sess. (November 1, 1983), at 15.

4/ Hearings before the Subcommittee on Civil Service, Post Office, and General Services of the Committee on Governmental Affairs, United States Senate, 98th Cong., 1st Sess. (November 1, 1983), at 15.

5/ Hearings before the Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives, 98th Cong., 1st Sess. (November 9, 1983), at 17.

Authority, similarly indicated that "[w]hen the Statute was enacted, the enabling legislation did not indicate what the relationship of the Chairman was to the other two Members."

It is thus abundantly clear that the enabling Statute of the Federal Labor Relations Authority did not empower the Chairman of the Authority with any special powers, duties or control over the other two Members of the Authority, let alone over the General Counsel. As evidenced by the above statements by the then Chairman of the Authority and Member Frazier to the Congress, it is clear that the ambiguity in the enabling statute regarding the role and powers of the Chairman of the Authority vis-a-vis the other two Members was the motivating factor in proposing the amendment to section 7104(b) of the Statute.

B. The Civil Service Miscellaneous Amendments Act of 1983 Did Not Empower the Chairman of the Authority with Budgetary or Personnel Control Over the Operations of the General Counsel.

The independence of the General Counsel was reaffirmed by Congress in the enactment of the Civil Service Miscellaneous Amendments Act of 1983 (P.L. 98-224). Section 3(a) of the Amendments Act of 1983 amended section 7104(b) of the Statute by adding that: "The Chairman is the chief executive and administrative officer of the Authority." In this regard, the legislative history of Sectin 3(a) of the Civil Service Miscellaneous Amendments Act of 1983 is void of any reference whatsoever pertaining to the need of the Chairman to make determinations with respect to the expenditure of funds by the General Counsel in fulfilling his statutory responsibilities. Rather, as fully supported in the legislative history, the designation of the Chairman as the chief executive officer of the Authority was required to define the relationship of the Chairman with respect to the other two Authority Members. 6/

As indicated previously, then Chairman Mahone testified before the House Subcommittee that the amendment to section 7104(b) of the Statute was required because "the enabling legislation did not indicate the relationship of the Chairman to the other two members," 7/ while Member Frazier testified

6/ Hearings before the Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives, 98th Cong., 1st Sess., on H.R. 4133 (November 1, 1983), at 15 and 17-18. Hearing before the Subcommittee on Civil Service, Post Office, and General Services of the Committee on Governmental Affairs, United States Senate, 98th Cong., 1st Sess., on S.1662 (November 9, 1983), at 15-17. Congressional Record, House of Representatives, November 16, 1983, at H10018-10019. Congressional Record, United States Senate, July 21, 1983, at S10609-10610 and February 9, 1984, at S1319-1320.

7/ Hearings before the Subcommittee on Civil Service of the Committee on Post Office and Civil Service, House of Representatives, 98th Cong., 1st Sess. (November 1, 1983), at 15.

before the Senate Subcommittee that he supported the amendment since the May 1982, delegation from the Authority Members to the Chairman of the Authority "isn't the complete answer because while the members may delegate authority and responsibility, in the final analysis under the statute as presently written I believe the members are all accountable." 8/ Thus, the testimony of the then Chairman of the Authority and Member Frazier before the House and Senate Subcommittees, respectively, in support of the Miscellaneous Amendments Act solely emphasized the operational side of the Authority and the relationship of the Chairman to the other two Members with respect to day-to-day administrative matters. None of the Authority Members or Chairman testifying before the House or Senate Subcommittees made reference to the impact, if any, of the amendment making the Chairman the chief executive and administrative officer of the Authority on the operations of the General Counsel. In testifying before the Senate Subcommittee, Member Frazier testified that "because the General Counsel of the Authority is independent of the members and is a Presidential appointee and his functions are to some extent those of prosecuting attorney before the Authority, that independence should be respected." 9/

The legislative history of the Miscellaneous Amendments Act is void of any reference to the imposition of control by the Chairman on the method in which the General Counsel will expend funds in fulfilling his statutory mandate. In discussing section 3 of the H.R. 4336, which was enacted as Section 3(a) of the Civil Service Miscellaneous Amendments Act of 1983, Representative Schroeder, the sponsor of the bill, commented that the portion of the bill which would designate the Chairman of the Authority as the chief executive and administrative officer of the Authority was not intended to impair the statutory responsibilities of the General Counsel. In this regard, Representative Schroeder stated on the floor of the House on November 16, 1983, that "the General Counsel would continue to have wide authority over his or her own staff and over the regional staff . . . . 10/ As stated by Representative Schroeder on the House floor, contracting "for more than $255,000 worth of furniture and office furnishings, in violation of the Federal property management regulations, the President's moratorium on furniture procurement, and the Anti-Deficiency Act," 11/ and, "after

8/ Hearing before the Subcommittee on Civil Service, Post Office, and General Services of the Committee on Governmental Affairs, United States Senate, 98th Cong., 1st Sess. (November 9, 1983), at 17.

9/ Hearing before the Subcommittee on Civil Service, Post Office, and General Services of the Committee on Governmental Affairs, United States Senate, 98th Cong., 1st Sess. (1983), at 16.

10/ Congressional Record, House of Representatives, November 16, 1983, at H10019.

11/ Congressional Record, House of Representatives, November 16, 1983, at H10018.

studying the gross waste of public funds," the General Accounting Office concluded that, "In our opinion, many of the administrative and management problems discussed in this report can be traced back to authority and responsibility being shared equally among the three members, rather than the designated chairman being the agency head." 12/ This clearly indicates that the intent of Congress in amending section 7104(b) of the Statute was as stated by Representative Schroeder "to insure that the Chairman is the chief executive and administrative officer of the Authority while, at the same time, preserving equality and independence for each of the three Authority members in the exercise of their decisional responsibilities." 13/ Similarly, on the floor of the Senate, Senator Stevens likewise clarified that "empowering of the chairman with this authority is not intended to diminish the powers and duties of the other members in matters relating to cases before them," 14/ while Senator Bingaman stated that since "[t]he enabling legislation, the Civil Service Reform Act of 1978, does not indicate the relationship of the Chairman to the other two members of the Authority . . . the role of the Chairman particularly with respect to the administrative authority in the agency is undefined," and that "the purpose of this section is to insure that the Chairman is the chief executive officer of the Authority while, at the same time, preserving equality and independence for each of the three Authority members and the performance of their statutory responsibilities." 15/ Indeed, Senator Stevens in introducing S.1664 stated that "the well-publicized furniture fiasco of last year can be, in part, attributed to the lack of one central person accountable for administrative matters. The empowering of the Chairperson with this authority will not in any way diminish the authority of other members in matters relating to cases before them." 16/ Thus, it again is abundantly clear that the intent and purpose of the amendment to Section 7104(b) of the Statute was to alleviate the "great friction, confusion, and delay," 17/ which existed among the three Authority Members with respect to internal administrative matters within the Authority. Accordingly, the Congressional intent as set forth in the legislative histories of the Statute and the Civil Service Miscellaneous Amendments Act of 1983 is clear; the General Counsel is an independent operator statutorily empowered to investigate and prosecute unfair labor practices and to direct, control and supervise all employees of the General Counsel, including those employees in the Regional Offices. The passage of the Civil Service Miscellaneous Amendments Act of 1983 in no way altered, clarified or infringed upon the General Counsel's statutory authority.

12/ Congressional Record, House of Representatives, November 16, 1983, at H10018.

13/ Congressional Record, House of Representatives, November 16, 1983, at H10019.

14/ Congressional Record, Senate, February 9, 1984, at S1319.

15/ Congressional Record, Senate, February 9, 1984, at S1320.

16/ Congressional Record, Senate, July 21, 1983, at S10609-10610.

17/ Congressional Record, Senate, July 21, 1983, at S10609.

C. Arbitrary Action by the Authority.

Consistently arbitrary actions by the Chairman and the Comptroller since 1981 involving the General Counsel's budget have interfered with the statutory independence of the General Counsel and have prompted the Congress to take the unusual step of specifically setting forth the funds and personnel for the General Counsel in the Continuing Resolution providing funds for fiscal year 1986 (H.J. Res. 465).

1. Arbitrary conduct by the Authority Members through the Chairman and Comptroller included the following:

(a) "In 1981, the Chairman and Members proposed closing three OGC regional offices as a budget cutting measure without consulting with the General Counsel." This bizarre proposal was set forth in a memorandum from James J. Shepard, Executive Director of the Authority to the Authority dated December 21, 1981, which proposed that three Regional Offices and all three Subregional offices be closed. A secret "Special Task Force" developed this proposal and included the Executive Director, Deputy Executive Director, the Solicitor, the Chief Counsel and members of the professional staff. No one in the Office of the General Counsel was involved in the preparation of this report or was even aware of its existence, and there was no budget crisis precipitating this proposal.

On December 21, 1981, a memorandum from then General Counsel H. Stephan Gordon to the Chairman stated, in pertinent part: 18/

". . . An urgent meeting was scheduled with representatives of OMB, OPM, and the Department of Defense. When my Deputy General Counsel asked to attend this meeting, he was specifically told that he would not be permitted to do so. In the course of this meeting the entire Shepard proposal was made public to the smallest detail, despite the fact that I had strenuously objected to the proposal; had indicated that some of the data, assumptions and figures were inaccurate, and despite the fact that the Agency's own budget officer had not been previously consulted regarding the accuracy of the proposal."

In discussing this proposal subsequent to the December 21 meeting of the Authority Members and representatives of OMB, OPM, and the Department of Defense, such representatives indicated to the Deputy General Counsel that the Authority Members proposed to implement this plan barring objections from the group at the meeting.

Conclusion: Arbitrary action by the Chairman and Members clearly infringed on the statutory independence of the General Counsel.

18/ See Attachment #2.

(b) In 1983, then Chairman Mahone, acting for the Authority Members, delegated to the nine Regional Directors, the authority to issue decisions and orders after hearings in representation cases. Heretofore, whenever a hearing was required in a representation matter, the record was submitted to the Authority for decision. Despite the fact that the work formerly done in Washington was delegated to the Regional Directors and the Regions, the Chairman failed to provide for the transfer of any resources notwithstanding an earlier commitment to me that the equivalent of two positions and the funding therefor would be transferred to cover the delegation of work.

Conclusion: Failure to fund work delegated to the Regions clearly infringed on the General Counsel's ability to exercise his statutory authority and duties.

(c) In 1984, then Chairman Mahone eliminated funds for OGC travel, training and equipment purchases from the FY '86 budget request. This was done without any consultation with me.

Conclusion: Making decisions on where the General Counsel was to spend his funds preempted the managerial prerogatives of the General Counsel and interfered with his statutory independence in violation of Section 7104(f) of the Statute.

(d) In 1984, then Chairman Mahone proposed (and ultimately implemented) a staff reduction of four fulltime equivalent positions (FTE) for FY 1985 within the General Counsel's office. These positions were then added to the Authority's staffing level despite my objections. In my objections, I noted that the OGC staff had decreased by 23 positions between FY '83 and FY '85 while the Authority's staff had increased by 2 positions during the same period.

Conclusion: By arbitrarily eliminating positions and funding for the General Counsel while adding positions to the Authority's staff, the Authority undermined the functioning of the Office of the General Counsel--thereby interfering with the statutory independence of the General Counsel as set forth in the Statute.

The incidents cited above are typical of the things that have happened to the Office of the General Counsel when it has not had control of its own funds. Most glaring of all was the totally unnecessay proposal to close three Regional Offices. No assessment of the impact of such an action was made, and the Authority was not even able to develop an accurate estimate of the impact of its own proposal. It is for this reason and the other

incidents cited that the Congress specified the level of funds available for the use of the Office of the General Counsel in fiscal year 1986. Never before had such an action been taken by the Congress.

Specific Congressional Funding For The General Counsel.

In previous fiscal years, funds for the use of the Office of the General Counsel were clearly identified (on page 22 of the Congressional Budget Submission for Fiscal Year 1985). For Fiscal Year 1986, The Congress acted to "direct that of the total appropriation for the FLRA $7,657,000 and 152 positions be directed for use by the Office of the General Counsel." Further, the Congress directed that, "the FY 1987 budget submission include a separate justification for the Authority and one for the Office of the General Counsel." It is clear that the Congress intended to and did set aside a portion of FLRA funds and positions for use by OGC, and that the Office of the General Counsel was to have control of these funds to prevent abuses like those outlined previously. The Congress acted specifically because it wanted to avoid actions like those engaged in by the Authority in December 1981, and in 1983 and 1984.

The impact of the Congressional action in specifying the level of funds for use by the Office of the General Counsel was to give the General Counsel control over those funds. With the passage of the appropriation and joint resolution for FY 1986, it was no longer possible for the Authority to reduce the level of funds appropriated for the use of the Office of the General Counsel. Thus, control of these funds effectively passed to the Office of the General Counsel.

-- Conclusion --

In concluding this study, the GAO report includes the following comments:

> "We believe that OGC's administrative responsibilities, particularly budgetary and personnel responsibilities, should be clarified. Furthermore, we believe that the budgetary independence accorded to the General Counsel of the NLRB and the Special Counsel of the MSPB could serve as useful models for resolution of this issue at FLRA. Both NLRB and MSPB have interpreted the legislative mandate for an independent prosecutor to mean that the adjudicatory body cannot assert control over the budget of an independent prosecutor."

As is clearly indicated by the events described herein, the institutional discrimination by the Authority against the General Counsel in the budget process threatens the independence of the General Counsel as required by the Statute and continues to present a formidable impediment to the General Counsel's ability to effectively perform his statutory mission. This institutional budgetary discrimination against the Office of the General Counsel has been consistent, irrespective of the political party in power, and has spanned the tenure of four Chairmen (Haughton, Mahone, Frazier and

An abbreviated version of General Counsel Miller's Comments is on pp. 4 and 5 of this final report.

Calhoun) with two General Counsels (H. Stephan Gordon and myself) being adversely affected. The above described incidents cannot be treated as isolated occurrences. Rather, they reflect a studied attempt by four different Chairmen to impinge upon the statutory authority of the General Counsel.

It is clear that neither the enabling statute nor the Miscellaneous Amendments Act have authorized infringement upon the General Counsel's statutory authority contained in section 7104(f) of the Statute. Inherent in the Statute is the authority and ability to control the General Counsel's own finances. It is further clear that Congress has reacted to this unfair treatment of the General Counsel by the Authority when enacting the current Continuing Resolution for funds for fiscal year 1986 when it specified the financial and personnel resources for use by the Office of the General Counsel. Nonetheless, the Authority continues to attempt to assert control over resources designated for use by the General Counsel, as evidenced by its refusal to breakout centrally funded items (as specified by the Congress) and by its reaction to this report.

In light of Gramm-Rudman-Hollings and the current budgetary environment, reduced domestic expenditures will continue for the forseeable future and will ensure increasing acrimony between the Authority and the General Counsel over budgetary matters. I thus agree with the conclusion of GAO that there is a further need for clarification so as to ensure that these detrimental and counter-productive actions by the Authority are never repeated. Absent specific legislation clarifying that the General Counsel exercises control over his budget, the Congress should require a separate budget authorization for the Office of the General Counsel as an interim measure to preserve its statutory independence. It is clear to me that nothing less will guarantee the continued viability of the Office of the General Counsel.

I appreciate the opportunity to comment on your report and am prepared to respond to any further inquiries which you may have.

Sincerely,

John C. Miller
General Counsel

Enclosures

ATTACHMENT #1

FEDERAL LABOR RELATIONS AUTHORITY

1900 E STREET NW. ● WASHINGTON, D.C. 20424

January 23, 1979

MEMORANDUM

TO: Members of the Authority

FROM: Robert J. Freehling
Solicitor

SUBJECT: Special Powers and Duties of Chairman of the Authority

As requested, this memorandum briefly discusses the question as to whether any special powers and duties attach to the Office of Chairman of the Authority under the new Statute.

As you know, the Statute (§7104(b)), like Reorganization Plan No. 2 of 1978 (Part III, §301(b)), merely provides that "(t)he President shall designate one member to serve as Chairman of the Authority." Neither the Statute nor the Plan sets forth any specific powers or duties which are assigned to or vest by reason of the designation as Chairman. In addition, a review of the pertinent legislative history of the Statute and of the Plan fails to disclose any consideration of the issue concerning the powers and duties of the Chairman as distinguished from those of the other members of the Authority.

Absent any express reference in a statute or any other indication of legislative intent, it is the view of the Justice Department, and the common understanding of agencies, that, in such circumstances, the chairman of the agency is not clothed with any special powers and duties by reason of his designation as chairman, except for the authority to preside at meetings of members of the agency. However, the other members may properly delegate to the chairman such additional powers and duties as they desire, as long as the delegation is not inconsistent with applicable statutes.

Accordingly, you are advised that special powers and duties do not attach to the office of Chairman of the Authority (except the power to preside at meetings of the Authority). However, if the members wish, they may delegate to the Chairman such additional powers and duties as they desire which are not inconsistent with their own obligations under law.

ATTACHMENT #2

UNITED STATES OF AMERICA
FEDERAL LABOR RELATIONS AUTHORITY
500 C STREET SW. • WASHINGTON, D.C. 20424

OFFICE OF THE GENERAL COUNSEL

December 21, 1981

MEMORANDUM

TO: Ronald W. Haughton
Chairman

FROM: H. Stephan Gordon
General Counsel

I have today carefully listened to the presentation of the Executive Director and must reiterate to you and the Members that I am totally opposed to the suggestions made to us this morning. Pursuant to what I understood our arrangements to be, I instructed my staff to present to you and the Members an alternative plan by tomorrow morning which would avoid the draconian measures outlined today by the Executive Director which in my estimation are not only totally unnecessary but would result in effectively dismantling the Agency. I must express my disappointment that the Members declined to listen to such a presentation and insisted that my Deputy General Counsel present any alternate plans to your respective staffs. Since I am trying to convince you, Mr. Chairman, as well as the Members, that the plan outlined to the four of us this morning is not only unnecessary, but, indeed, counterproductive, and since our short meeting this afternoon left me with the definite impression that you had already determined to implement the Executive Director's plan, I see no value in such a meeting between our respective staffs. Since my staff already knows that I am opposed to the plan presented this morning, they would be placed in a most difficult position by working with your staff in implementing something that they know I oppose. Such a meeting would not only be unproductive, I am afraid, but would create acrimony which I believe is best to be avoided.

Permit me, Mr. Chairman, to outline once more why I am opposed to the measures outlined this morning.

1. As you know, the Agency has submitted to OMB an operational plan which would allow the Agency to operate with a budget of $14,795,000. This plan was submitted pursuant to OMB's request, was approved by OMB, and is presently being implemented.

2. Pursuant to and in conformance with this plan the following steps have been taken:

A. The Authority

1. A RIF of approximately 31 employees effective January 8, 1982;

2. Furlough all Authority employees for approximately 13 days during the current Fiscal Year;

3. Restrict copies of decisions being printed;

4. Restrict purchase of miscellaneous services, materials, and supplies;

5. Cancel equipment rental on seven (7) word processing units, three (3) Savin copiers, and (1) Zerox 9400 copier, and the signature machine.

B. The Office of the General Counsel

1. Hold 16 present vacancies open;

2. A RIF of 12 employees effective January 8, 1982;

3. Furlough all G.C. employees for approximatley 15 days during the current Fiscal Year. (I had proposed an additional RIF of 12 people to substitute for this furlough.);

4. Close the Kansas City Office;

5. Curtail travel from $1,144,000 of last Fiscal Year to $600,000 in the current Fiscal Year with an additional reduction of travel to $508,000 this Fiscal Year. This is to be accomplished through a moratorium in travel during November 1981 (accomplished) and during the periods of March 8 - 20, 1982 and September 12 - 30, 1982;

6. Restrictions and elimination of leased equipment (2 Lanier word processing machines; 2 Savin copiers; GSA rental car);

7. Elimination of space in the Boston, Dallas, New York, and Honolulu offices;

8. No SES bonuses during FY 1982;

9. No cash awards during the fiscal year;

10. No Quality Step increases during the fiscal year;

11. No promotions, except career ladder, during the fiscal year;

12. No training involving the expenditure of funds during the fiscal year;

13. Defer automation of the statistical reporting system;

14. Defer installation of legal research system.

All of the above steps have been implemented and we are on target in meeting the goal of getting the Agency to the $14,795,000 level as we represented to OMB we would.

The current budget, even under the most dire circumstances, would be $14,593,000, or a reduction of $202,000 from the plan we submitted to OMB. While I do not minimize such a reduction, especially when it comes on top of an already seriously curtailed operation, it hardly calls for the measures outlined by the Executive Director this morning. Even at its worst, the loss of $202,000 represents an additional furlough of 5 days at the most of the Agency's employees. In this latter regard, I believe that OMB and/or the Congress may supply some additional relief (i.e., 90% of the pay raise), and that the revised level of funding hardly warrants the destructive measures outlined to us today.

With respect to some of the measures outlined this morning, permit me to point out again:

1. The closing of 6 offices and the elimination of the staffs of these offices would irretrievably cripple the Agency and would constitute a loss from which the Agency would not recover for years to come. This action would be irreparable and, in my opinion, irresponsible. The field organization has handled in an exemplary manner over 90% of the Agency's caseload. The measures now being proposed would in one fell swoop wipe out the ability of the Agency to process the bulk of its caseload in an effective and timely manner.

2. Investigation of cases by requiring the parties to come to Regional Office cities would, indeed, save our Agency considerable money, but it would cost the Federal Government and ultimately the taxpayers literally millions of dollars to transport parties and witnesses long distances at great cost. Moreover, the cost in lost employee time and the concomitant disruption of governmental operations in scores of Agencies is incalculable.

3. This morning's representations to the contrary, the recommended change in investigation procedures would not reduce the caseload - indeed, it would increase it, because noncompliance with the requirement to transport so many people by the Agencies would lead to additional charges, subpoena enforcement proceedings, etc. The assumption that this restructuring of the Office of the General Counsel would lead to the faster processing of cases is totally fallacious. The productivity of the field staff is already at a very high level, unmatched even by the NLRB. To eliminate on-site investigations can only reduce our productivity and substantially elongate the time frames required to bring cases to dispositive action.

4. Holding ULP and Representation hearings only in Regional Office cities, many of which hearings entail the testimony of scores of witnesses, has the same drawbacks as set forth in items 2 and 3 above.

5. Settlements would not increase (we are already settling 90% of our meritorious cases). Indeed, the concomitant delays that such investigations would cause, would, discourage settlements.

6. The supposition that the Agency could divert savings in SLUC costs to other purposes is fallacious. Because the SLUC costs are a separate item in the budget, reductions in this area this year will lead to further OMB budget cuts in the future because the current SLUC total could no longer be justified. This would result in a further diminution of the Agency's already depleted base funding level and would leave the Agency no bether off in the future.

7. One overriding concern which I have after today's meeting is that the scope of the cuts outlined by the Executive Director will result in far greater savings than those reqired by OMB, the President and the Congress. As noted above, the plan already submitted to and approved by OMB restricted Agency spending to a level of $14,795,000, only $202,000 above the minimum funding level proposed for the Agency. Cuts of the magnitude proposed by the Executive Director are substantially in excess of those required by OMB and the Congress and would result in a base funding level far below (more than $2,000,000) our FY 1983 Presidential budget mark.

8. On page 4 of the Executive Director's memorandum dated December 21, 1981, an assumption is made by the Executive Director of a 25% labor reduction at the Regional Office level. This assumption is unexplained, unsupported and without justification.

9. On page 5 of the Executive Director's memorandum, the statement is made that the consolidation of Authority and General Counsel "Support" activities will yield a savings of $130,000. No justification is provided for this computation and no positions are identified in this proposal. Because there is no duplication of effort between G.C. staff functions and Authority support staff, this proposal does not appear to be valid. The General Counsel staff do not perform administrative functions already accomplished by the Office of Administration.

-- Counter-Proposal --

1. The plan already submitted to and approved by OMB should be used as a basis for further action by the Agency. This plan has been approved by the Members and the General. The Agency has implemented the plan in order to reduce spending to a level of $14,795,000. OMB's approval of the plan shows its understanding of the manner in which it believes the Agency can function under the current budget restrictions.

2. The further mandated budget cut by Congress reduced funding for the Agency to a level of $14,203,000. Increasing this total by 50% of the cost of the pay raise (an increase initially approved by OMB) would

raise our funding for FY 1982 to a level of $14,593,000 -- a reduction of only $202,000 below the level of the plan already submitted to and approved by OMB. The deviation of $202,000 hardly calls for scuttling the Agency. At a minimum, any deviation from the plan should be coordinated with OMB.

3. The savings of $202,000 can be achieved by a furlough of each Agency employee for a mixiмum of five additional days over the current plan, or by other measures which we can mutually discuss. This additional furlough would increase the total number of days of furlough to a level of 20 days for the staff of the Office of the General Counsel and 18 days for the staff of the Authority.

The institution of the drastic and unnecessary measures proposed by the Executive Director will, I believe, lay the Agency open to the charge that we are deliberately trying to sabotage the program in order to prove that the Administration's budget for the Agency is insufficient for it to effectively carry out its mission. I am sure you would agree that even giving the impression of such a motivating force would have a devastating impact on the future of the Agency.

Moveover, I am appalled at the manner in which the Executive Director's proposals have been formulated. Examination of the proposals indicates that the essential burden of the budget cuts is being placed on the Office of the General Counsel. At no time was the Office of the General Counsel brought into the process or provided with an opportunity to comment and provide imput on the proposals which have such a drastic effect on its operations. Further, all of these proposals have been drafted in total secrecy by a task force of individuals unfamiliar with FLRA field operations. In view of the manner in which these proposals were developed, their very credibility is brought into question. As reflected in the proposals themselves, many are based on fallacious assumptions, incorrect information, and erroneous data.

There is no question that there are serious budgetary problems facing our Agency. Up to now we have dealt with these problems in a thoughtful manner and have obtained OMB approval for our planned actions. To adopt the irresponsible proposals of the Executive Director would, in my view, result in the destruction of the program we have worked so hard to build.

In any case the mere fact that these irresponsible proposals have reached the highest levels of the Agency will have a devastating effect on the morale of all Agency employees, and particularly the morale of the affected employees in the Office of the General Counsel.

cc: Frazier
Applewhaite

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